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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 CHILDREN'S HEALTH DEFENSE,
20 a Georgia non-profit organization,

21 Plaintiff,

22 v.

23 FACEBOOK, INC., a Delaware corporation;
24 MARK ZUCKERBERG, a California resident;
25 SCIENCE FEEDBACK, a French corporation;
26 THE POYNTER INSTITUTE FOR MEDIA
27 STUDIES, INC., a Florida corporation; and
28 DOES 1-20,

Defendants.

Case No. 3:20-cv-05787-SI

**VERIFIED FIRST AMENDED
COMPLAINT**

- 1) FIRST AND FIFTH AMENDMENTS
(BIVENS);**
2) LANHAM ACT (15 U.S.C. § 1125(a));
3) RICO FRAUD (18 U.S.C. § 1962);
4) DECLARATORY RELIEF.

JURY TRIAL DEMAND

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 CHILDREN'S HEALTH DEFENSE,
20 a Georgia non-profit organization,

21 Plaintiff,

22 v.

23 FACEBOOK, INC., a Delaware corporation;
24 MARK ZUCKERBERG, a California resident;
25 SCIENCE FEEDBACK, a French corporation;
26 THE POYNTER INSTITUTE FOR MEDIA
27 STUDIES, INC., a Florida corporation; and
28 DOES 1-20,

Defendants.

Case No. 3:20-cv-05787-SI

**VERIFIED FIRST AMENDED
COMPLAINT**

- 1) FIRST AND FIFTH AMENDMENTS
(BIVENS);**
2) LANHAM ACT (15 U.S.C. § 1125(a));
3) RICO FRAUD (18 U.S.C. § 1962);
4) DECLARATORY RELIEF.

JURY TRIAL DEMAND

1 Plaintiff Children’s Health Defense, by and through its undersigned attorneys, sues
 2 defendants Facebook, Inc., Mark Zuckerberg, Science Feedback, the Poynter Institute for
 3 Media Studies, Inc., and Does 1-20, and for its Verified First Amended Complaint alleges on
 4 personal information as to itself and on information and belief as to all other things:

5 6 INTRODUCTION

7 1. This is a case about how an officer and an agency within the U.S. Government
 8 “privatized” the First Amendment by teaming up with Facebook to censor speech which, under
 9 the Bill of Rights, the Government cannot censor. In February 2019, Democratic Congressman
 10 Adam Schiff (D-CA) threatened to introduce legislation to remove Facebook’s immunity under
 11 Section 230 of the Communications Decency Act unless Facebook implemented algorithms to
 12 “distinguish” and suppress so-called “vaccine misinformation” and advertising. The Centers
 13 for Disease Control and Prevention (“CDC”) and, under its aegis, the World Health
 14 Organization (“WHO”) collaborated closely with Facebook to suppress vaccine safety speech
 15 by using a “warning label” and other similar types of notices which, while purporting to flag
 16 misinformation, in reality censor valid and truthful speech, including content posted by
 17 Plaintiff on its Facebook page regarding vaccines. A judicial remedy is urgently required to
 18 redress the damage to Plaintiff Children’s Health Defense (“CHD”) and the abridgement of its
 19 fundamental rights caused by Facebook and its Chairman Mark Zuckerberg’s aggressive and
 20 illegal efforts, embarked upon in response to state pressure and in conjunction with state actors,
 21 to censor and suppress CHD’s posting of material critical of those very state actors and voicing
 22 alternative views concerning the safety and efficacy of vaccines.

23 2. In 17th-century England, government controlled speech through its monopoly on
 24 printing presses. *See* L. Levy, *Emergence of a Free Press* 6 (1985). The first newspapers were
 25 also met by licensing prosecutions of unlicensed news-sheet printers and the power of the
 26 crown to grant privileges of monopoly. *See* F. Siebert, *Freedom of the Press in England 1476-*
 27 *1776* (1965); *see also* 2 J. Story, *Commentaries on the Constitution of the United States*,
 28 § 1882 (5th ed. 1891). Indeed, “history discloses a persistent effort on the part of the British

1 government to prevent or abridge the free expression of any opinion which seemed to criticize
 2 or exhibit in an unfavorable light, however truly, the agencies and operations of the
 3 government.” *Grosjean v. American Press Co.*, 297 U.S. 233, 245 (1936).

4 3. Here, government actors *actively partnered* with one of today’s leading social
 5 media companies, Facebook — an organization whose reach and power vastly exceeds that of
 6 any “printing press” past or present — to censor Plaintiff’s speech concerning important public
 7 health issues and government policy. The framers were familiar with the English struggle and
 8 enacted the First Amendment to establish and preserve the right of the People to full
 9 information about the doings or misdoings of their government. *Grosjean*, 297 U.S. at 247-49.
 10 This case mirrors the framers’ concerns. The censorship of protected speech is not rendered
 11 legal because the government has used and acted in conjunction with Facebook and
 12 Zuckerberg to effect that censorship. On the contrary, the government cannot accomplish
 13 indirectly what the Constitution forbids it to do directly.

14 4. This is also a case involving claims of corporate fraud against Facebook and
 15 Zuckerberg for, *inter alia*, their smear campaign against Plaintiff consisting of false and
 16 misleading content that Facebook itself created and developed (through surrogate “fact-
 17 checkers”) and affixed directly to Plaintiff’s Facebook page — all for the purpose of
 18 stigmatizing CHD and its content regarding vaccines, and discouraging users from accessing
 19 this content. Defendants engaged in multiple acts of fraud and deception in furtherance of their
 20 aggressive and heavy-handed campaign of censorship against Plaintiff’s Facebook page. While
 21 Facebook and Zuckerberg proudly present themselves in public as avatars of free speech and
 22 open debate as the best method for approaching scientific truth, this case reveals the opposite:
 23 that they are indeed censors and opponents of real science and open debate who believe that
 24 they alone are in possession of “truth” and have the right to suppress anyone who disagrees.

25 5. In order to determine this case it is not necessary for the Court to act, and the
 26 Court is not being asked to act, as the ultimate arbiter of scientific truth in the areas of vaccine
 27 safety and 5G technology. Facebook and Zuckerberg have arrogated that power to themselves,
 28 which is precisely what has given rise to their illegal conduct and the causes of action here. It

1 is the essence of the scientific method that conclusions drawn from research and empirical
 2 investigation are tentative and subject to revision.¹ It is Zuckerberg and Facebook that have
 3 weaponized the concept of scientific “fact” in an effort to shut down the differing conclusions
 4 and viewpoint that CHD attempts to voice, and which visitors to CHD’s Facebook website
 5 have a right, and should be permitted, to hear and evaluate for themselves. In sum, it is
 6 Facebook’s dogmatic conclusion (imprinted directly on CHD’s Facebook page) that the
 7 vaccine and 5G issues are susceptible of being labelled definitively “true” or definitively
 8 “false” (by Facebook) that is itself false and misleading. In essence, CHD looks to the Court
 9 not to function as the ultimate arbiter of scientific “truth” or “fact,” but to redress Facebook
 10 and Zuckerberg’s illegal efforts to foreclose and censor what should be open scientific debate,
 11 and to malign and destroy CHD (their ultimate goal) in that effort.

12 6. CHD and its founder Robert F. Kennedy, Jr. (“RFK, Jr.”) have built CHD’s good
 13 name and reputation as a public health advocate for complete candor as to the risks of
 14 environmental toxins, vaccines, 5G and wireless networks, and the conflicts of interest that
 15 have compromised government oversight of those products and services. Plaintiff’s online
 16 reputation is essential to its standing as a preeminent leader in the health reform movement.
 17 CHD seeks \$5 million or more in treble and punitive damages against the Facebook defendants
 18 for their deliberate engagement in a campaign based on false and misleading advertising and
 19 direct censorship in order to damage Plaintiff’s reputation and organization.

20 7. Facebook promotes itself as a social media website with 214 million users in the
 21 United States and 2.2 billion worldwide. Facebook is not cost-free. Its users incur the cost of
 22 having their information mined and shared. *Bass v. Facebook, Inc.*, 394 F. Supp. 3d 1024,
 23 _____

24 ¹ The history of science and medicine are replete with examples, from Galileo to
 25 Semmelweis, of theories which were vilified and censored in their exponent's lifetimes, only to
 26 find widespread acceptance after their deaths. Such reevaluations and reappraisals are not
 27 uncommon. What is in one period treated as false, even heretical science, may eventually at a
 28 later time gain acceptance as scientific orthodoxy - perhaps, in turn, only to be modified or
 superseded by further discoveries and new ideas. The view that vaccines are not safe for all
 people at all times, despite official orthodoxy, is not too dangerous to air and be heard.

1 1037 (N.D. Cal. 2019). Facebook is sustained by, and its profits are largely due to, massive
 2 advertising — i.e., by selling the value of its users’ attention to other companies that wish to
 3 persuade those users to buy the advertisers’ goods and services. Less well-known, and directly
 4 relevant to this action, are Facebook’s specific efforts as a seller of pharmaceutical ads,
 5 purveyor of global 5G and wireless networks and services, and developer of vaccines through
 6 Zuckerberg’s separate entities. Facebook promotes itself as a service for people “to talk openly
 7 about the issues that matter to them, even if some may disagree or find them objectionable.”
 8 *Community Standards*, FACEBOOK, <https://www.facebook.com/communitystandards/> (last
 9 visited Nov. 12, 2020). It does not say that it will censor and falsely disparage opposing
 10 viewpoints or content that points out the health risks of *those products and technologies*
 11 through material misrepresentation and blatant falsehood. Here, defendants’ deliberate
 12 falsehood is that Plaintiff’s page contains “false information” that poses a “risk of imminent
 13 violence or physical harm.” Nothing could be further from the truth.

14 8. This case arises in a pandemic when the need for public debate on health issues
 15 has never been greater. CHD’s vision is a world free of childhood chronic health conditions
 16 caused by environmental exposures. Plaintiff highlights harms associated with the current
 17 vaccine program, pesticides, and deployment of 5G and other wireless technologies. Although
 18 Zuckerberg’s professed “moon shot mission” is “to cure all disease on the planet within the
 19 Facebook chairman’s children’s lifetimes,” defendants’ first giant leap for humankind is to
 20 censor CHD’s viewpoint, which competes with Facebook’s business plan for pharmaceutical
 21 ad revenue, vaccine development, and 5G and wireless networks.

22 9. Since September 2019, Facebook’s and Zuckerberg’s aggressive censorship
 23 campaign — initiated in response to government pressure and executed in conjunction with
 24 government actors — has falsely denigrated CHD through a “warning label” on CHD’s page,
 25 which conveys a classic false imputation of dishonesty in CHD’s trade. Since March 2019,
 26 with increasing frequency, Facebook and its surrogate self-styled “independent fact-checkers”
 27 (Facebook and Zuckerberg’s Orwellian term for those it has retained, paid for, donated funds
 28 to, trained and directed) have created, developed, and published “false information” tags

1 directly on CHD’s page, which materially misrepresent the accuracy of CHD’s own content.
 2 These techniques of censorship culminated in even more aggressive and blatant acts of
 3 suppression by Facebook and Zuckerberg: the deactivation of CHD’s funding button on its
 4 Facebook page, making it impossible for viewers to donate to CHD; the demotion of CHD’s
 5 content on vaccines and 5G technology; and ultimately Facebook and Zuckerberg’s actual
 6 removal of CHD’s previously “fact-checked” content — an action taken only after this lawsuit
 7 was filed, and in apparent retaliation against CHD for having the temerity to resist Facebook’s
 8 censorship by filing the lawsuit.

9 10. CHD seeks a potent remedy as antitoxin to Facebook’s toxic propagation of the
 10 “known lie [which is] at once at odds with the premises of democratic government and with the
 11 orderly manner in which economic, social, or political change is to be effected.” *Garrison v.*
 12 *Louisiana*, 379 U.S. 64, 75 (1964) (“calculated falsehood [is] no essential part of any
 13 exposition of ideas”); *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J.,
 14 dissenting) (“The ultimate good desired is better reached by free trade in ideas -- ... the best
 15 test of truth is the power of the thought to get itself accepted in the competition of the
 16 market”). As explained below, defendants’ conduct violates the First and Fifth Amendments,
 17 constitutes false advertising under the Lanham Act, and is in violation of the RICO statute. Nor
 18 are Zuckerberg or Facebook’s actions shielded or rendered permissible by Section 230 of the
 19 Communications Decency Act. Zuckerberg and Facebook possess enormous power. In their
 20 deliberate, self-interested and self-serving censorship campaign directed at CHD, their abuse of
 21 that power has been egregious. The legal redress sought herein is fully warranted.

22 JURISDICTION AND VENUE

23 11. This Court has personal jurisdiction over all defendants because they conducted
 24 business with and injured Plaintiff in this District. Facebook itself is headquartered within the
 25 District, which is also where the individual and at least some of the Doe defendants reside.

26 12. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
 27 question), 28 U.S.C. § 1332(a) (complete diversity of the parties, and the amount in
 28

controversy exceeds \$75,000), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (further relief). The action asserts continuing violations of the First and Fifth Amendments, 18 U.S.C. §§ 1964(a), (c) of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), and 15 U.S.C. § 1125(a) (Lanham Act), and there is an actual case or controversy.

13. Venue is proper under 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b) because defendants transacted a substantial portion of their affairs and caused damages in this District. Moreover, Facebook’s Terms of Service (“Terms”) to which Plaintiff agreed require that disputes be resolved in this forum and that the laws of the State of California apply. Terms at ¶ 4(4).

PARTIES AND RELATED ENTITIES

14. Plaintiff Children’s Health Defense is a not-for-profit 26 U.S.C. § 501(c)(3) membership organization incorporated under the laws of the State of Georgia, and headquartered at 1227 North Peachtree Parkway, Suite 202, Peachtree City, Georgia 30269. CHD was founded in 2015 (under a different name) to educate the public about the risks and harmful effects of chemical exposures upon prenatal and children’s health, including from particular vaccines and environmental health hazards, such as 5G and wireless networks and products, and to advocate for social change both legislatively and through judicial action. The organization is run by RFK, Jr. and a team comprised largely of mothers whose children suffered serious adverse events after vaccination.

15. As a publisher of information related to public health and reform, CHD operates the <https://childrenshealthdefense.org> website, and publishes, *inter alia*, a “weekly wrap up” with research articles and opinion pieces available at <https://childrenshealthdefense.org/category/news/childrens-health/>. As set forth more fully *infra*, CHD and its founder and chairman Robert F. Kennedy, Jr. are not “anti-vaccine².” Rather, they advocate for informed

² CHD and Robert F Kennedy Jr. are frequently smeared with the term “anti-vax,” in an effort to marginalize them as proponents of “fringe-speech.” In truth, they advocate for transparency and tighter safety standards, particularly given the influence of pharmaceutical

1 patient consent based on full disclosure of all relevant medical information. CHD receives all
 2 of its support from contributions, membership fees, and gross receipts from activities related to
 3 its tax-exempt functions. In Tax Year 2018, CHD reported \$1,063,837 in gifts, grants,
 4 contributions, and membership fees received. CHD's primary sources of revenue derive from
 5 membership dues and donations that CHD solicits on its website and, formerly, on its
 6 Facebook page. In addition to that monetary interest, attracting visitors to the CHD website and
 7 its Facebook page enables CHD and RFK, Jr., CHD's contributors, and its readers to associate
 8 and engage in speech on matters of mutual concern. CHD has standing to bring suit as an
 9 injured "person" under 18 U.S.C. § 1964(c).

10 16. Defendant Facebook, Inc. is a Delaware corporation, with its principal place of
 11 business in Menlo Park, California. (At times herein, where Facebook acted on behalf of all
 12 defendants, they are collectively referred to as "Facebook.") Sometime in or around 2017,
 13 CHD executed Facebook's Terms in order to establish and maintain CHD's Facebook page as
 14 a central clearinghouse for CHD's public health newsgathering and advocacy activities, and as
 15 a fundraising platform.

16 17. Defendant Mark Zuckerberg is a co-founder of Facebook, Inc., and at all times
 17 relevant hereto, has served as Facebook's chairman, chief executive officer, and controlling
 18 shareholder. He also co-owns and is co-managing member of the Chan-Zuckerberg Institute,
 19 LLC ("CZI") and Chan-Zuckerberg Biohub, LLC ("CZB"), which are, *inter alia*, for-profit
 20 vaccine developers. He resides in the Northern District of California and is a "person" who
 21 may be sued under 18 U.S.C. § 1961(3). He is sued individually, and under theories of
 22 respondeat superior, alter ego, and agency liability.)

23 18. According to Facebook's 2017 Proxy Statement:

24 Because Mr. Zuckerberg controls a majority of our outstanding
 25 voting power, we are a "controlled company" under the corporate
 26 governance rules of the NASDAQ Stock Market LLC (NASDAQ).

27 companies with large financial interests, statutory immunity from tort liability for vaccine-
 28 injury, and a record of producing self-interested "research" studies on vaccine safety issues.

Therefore, we are not required to have a majority of our board of directors be independent, nor are we required to have a compensation committee or an independent nominating function. In light of our status as a controlled company, our board of directors has determined not to have an independent nominating function and to have the full board of directors be directly responsible for nominating members of our board.

19. According to its 2018 Proxy Statement, defendant Zuckerberg has the sole power to elect or remove any director from Facebook’s Board, as he controls a majority (53.3%) of Facebook’s total voting shares. Zuckerberg directs and controls Facebook’s business and is personally and directly responsible for the damages caused by his individual actions, and by his controlled entities’ misconduct as set forth herein. Facebook and its surrogate “fact-checker” entities are also sued under principles of alter ego and *respondeat superior* liability.

20. Defendant Science Feedback is a French non-profit organization to which Facebook contributes an undisclosed amount over 5% of its resources, and which Facebook has engaged as one of its “fact-checker” agents to help Facebook mislead Facebook’s users and divert them from CHD’s page through a fraudulent scheme by which 1) Facebook flags selected truthful and interpretive content on CHD’s Facebook page as “false information,” 2) trains, finances, and directs fact-checkers to draft CDC/WHO-based oppositional articles, and 3) Facebook posts its agent’s content with a grey overlay (like graffiti) over CHD’s content on CHD’s page.

21. Defendant The Poynter Institute for Media Studies, Inc. (“Poynter”) is a Florida non-profit organization to which Facebook donates both to the parent corporation (Poynter), and more than 5% of its “fact-checker” branded website’s (“Politifact”) revenue.³ Facebook has contracted with Poynter/Politifact as an additional “fact-checker” surrogate under the same working collaboration described *supra*: Facebook identifies selected content on CHD’s Facebook page as “false information”; instructs and delegates to Poynter to draft oppositional

³ On or about January 24, 2018, Poynter filed an application for registration of the fictitious name “Politifact” in the State of Florida.

1 articles referencing CDC/WHO publications as “authoritative,” and Facebook maintains
 2 editorial control over those oppositional articles which it inserts on CHD’s page under a “False
 3 Information” tag, in order to divert users from CHD’s own content on that false basis.
 4 Facebook is a major donor to both Poynter and Politifact. *Largest funders of Poynter*, POYNTER
 5 (last updated June 2020), <https://www.poynter.org/major-funders/>; *Who pays for PolitiFact?*,
 6 POLITIFACT (last updated June 2020), <https://www.politifact.com/who-pays-for-politifact/>.

7 22. The Facebook corporate and individual defendants conspired with one another,
 8 and others as yet unknown at Facebook, or elsewhere (the “Doe defendants”) in an informal
 9 enterprise (the “content management enterprise”) to accomplish their common purposes. Each
 10 of them was acting within the course and scope of that conspiracy, agency, partnership, or joint
 11 venture. The acts and conduct of each of the defendants were known to and authorized by, or
 12 ratified by, the other defendants.

13 23. The informal enterprise operated by defendants had an ascertainable structure
 14 separate and apart from the pattern of racketeering activity in which the defendants engage,
 15 and from Facebook, Science Feedback, or Poynter, which are joined as corporate defendants.
 16 The informal enterprise operated within one or both of those related structures as an
 17 “enterprise” with a common purpose, structure or organization, and open-ended lifespan
 18 necessary to accomplish their joint purposes to defraud CHD, destroy its reputation and
 19 fundraising, and blunt the impact of its public health education and advocacy efforts.

20 21 **STATEMENT OF MATERIAL FACTS**

22 **A. CHD’s Interest in Vaccine and 5G and Wireless Network Safety.**

23 24. Robert F. Kennedy, Jr. is the founder and Chairman of the Board of CHD. For
 24 over three decades, RFK, Jr. has been one of the world’s leading environmental advocates. He
 25 is the founder and past president of Waterkeeper Alliance, the umbrella group for 300 local
 26 waterkeeper organizations, in 34 countries, that track down and sue polluters. Under his
 27 leadership, Waterkeeper has grown to become the world’s largest clean water advocacy
 28 organization. RFK, Jr. founded CHD, in part, to address a void in scientific studies of, and

1 reform advocacy about, the environmental causes of pediatric neuro-developmental disorders
2 and food allergies.

3 25. Since its founding, CHD has become a leading independent child health
4 protection and advocacy group. CHD fulfills a vital mission to provide the public with timely
5 and accurate vaccine and 5G and wireless technology safety information, particularly in the
6 absence of any appreciable ongoing HHS or CDC research, any congressional oversight to
7 “reduce the risks of adverse reactions to vaccines,” or any reliable pharmaceutical industry
8 research, or private tort remedy. *See infra*. CHD’s reputation depends on the credibility of its
9 science-based research articles, which explore both the known and presently-unknown public
10 health risks of vaccines and 5G and wireless technology, in the quest for objective truth.

11 26. CHD’s mission is threefold: to end childhood epidemics by eliminating harmful
12 toxic exposures; to hold those accountable who knowingly allow children to be unnecessarily
13 exposed to dangerous toxins that destroy their health; and to establish greatly-needed
14 safeguards to prevent the devastation to children and families that these chronic illnesses cause.
15 CHD advocates for open and honest public debate on the efficacy and safety of the CDC’s
16 entire Child and Adolescent Immunization Schedule. CHD helps the public navigate the
17 “clutter” of the internet age by posting reliable and up-to-date content for its web traffic
18 viewers. Specifically, CHD publishes articles on its website on a weekly (or more frequent)
19 basis, which describe current scientific research on the potential health risks posed by various
20 environmental toxins, new technologies, and vaccines.

21 27. CHD’s science-review articles contain hyperlinks to the referenced peer-
22 reviewed, published journals. *See generally Research Resources and Critiques*, CHILDREN’S
23 HEALTH DEFENSE, <https://childrenshealthdefense.org/advocacy-policy/critiques/> (last visited
24 Aug. 14, 2020). CHD prominently labels opinion pieces as editorials. CHD’s website also
25 contains a drop-down menu under the tag “Research” with links to its “Science Library.”
26 CHD’s “Science Library” features a searchable database with hundreds of peer-reviewed,
27 published articles on environmental contaminants, *inter alia*, of commercial vaccines, some of
28 which have been implicated in the rise of chronic illnesses and developmental disorders among

1 at-risk children. All abstracts are tagged with keyword links to cross-reference topics.

2 28. CHD's website also prominently features an "Advocacy/Policy" section down its
3 right-hand column with hyperlinks to seven headers, the first and most prominent of which
4 reads "CDC – Corruption, Deceit, and Cover-Up." That header contains the following
5 preamble:

6 With the global vaccine market now at tens of billions of dollars,
7 vaccine safety should be of utmost concern to the Centers for
8 Disease Control (CDC). But instead, rather than testing and
9 monitoring the health effects of vaccines and patient injuries
10 truthfully to the American public and making critical and necessary
11 corrections in the program, *the CDC has become a mouthpiece for
industry and has protected the 'all vaccines for all children' policy
despite peer-reviewed science to the contrary.*

12 According to a UPI Investigative article written in the early 2000s,
13 the CDC owned at least 28 vaccine patents. They are also in charge
14 of vaccine promotion (getting the public to take vaccines) and
15 vaccine safety. The CDC, like other large bureaucratic agencies,
16 also has a revolving door to industry that comes with *inherent
conflicts of interests*. Common sense should have told us that this
system was doomed to fail.

17 The documents below, some of which were obtained by the
18 Freedom of Information Act (FOIA) show *a pattern of deceit*
19 perpetrated by the CDC on the American public and world stage
20 for over 25 years. *The Children's Health Defense believes that
vaccine safety should be taken from the CDC.*

21 29. CHD's website also contains hyperlinks to numerous articles that criticize the
22 CDC and challenge its veracity, with illustrative titles such as: *CDC's Vaccine 'Science' — A
23 Decades-Long Trail of Trickery; Why You Can't Trust the CDC on Vaccines; CDC and WHO
24 Corrupt Financial Entanglements with the Vaccine Industry; Dr. Brian Hooker's Official
25 Statement Regarding Vaccine Whistleblower William Thompson; CDC & FDA Committee
26 Members Have Financial Conflict of Interest with Vaccine Pharmaceuticals; OSC Calls for
27 Further Review of Whistleblower Disclosures on Zika Testing; CDC Spider Letter; CDC: Off
28 Center; Real-Life Data Show that the CDC Vaccine Schedule is Causing Harm; Don't Fall for*

1 *the CDC's Outlandish Lies About Thimerosal; CDC and WHO Corrupt Financial*
 2 *Entanglements with the Vaccine Industry; CDC Lies About, and Media Repeats, Risk of Dying*
 3 *from Measles; CDC's 'Universal' Recommendations for Infant Hep B Vaccine Not Based on*
 4 *Science, But Assumptions; CDC's Infant Hep B Vaccine Recommendations—No Proof of*
 5 *Safety?" See, e.g., CDC and WHO Corrupt Financial Entanglements with the Vaccine*
 6 *Industry* [and other articles], CHILDREN'S HEALTH DEFENSE,
 7 <https://childrenshealthdefense.org/cdc-who/> (last visited Aug. 14, 2020).

8 30. Before publishing its science review articles in its *Kennedy News & Views*
 9 electronic weekly newsletter (recently changed to *The Defender*), CHD conducts an internal
 10 editorial process genuinely to fact-check the text and confirm the cited sources, to ensure that
 11 every article cites sources for every fact it asserts. Otherwise, CHD publishes the article as a
 12 clearly-labeled editorial or opinion piece, where the opinions expressed are not necessarily the
 13 opinions of CHD. Once approved, the article is slotted into the publishing schedule, with
 14 layout on the CHD website, image design, and publication on the website in designated
 15 categories (e.g., child health, toxins), and layout in the newsletter template for emailing
 16 subscribers. CHD checks the accuracy of the article again before emailing it to CHD
 17 subscribers, then alerts its affiliated organizations that the article has published, and finally,
 18 CHD posts the article on its Facebook page, Twitter, Instagram, and YouTube (when
 19 applicable).

20 31. The CHD website offers for sale through its online store, *inter alia*, copies of
 21 James Ottar Grundvig's book, *Master Manipulator: The Explosive True Story of Fraud,*
 22 *Embezzlement, and Government Betrayal at the CDC*, which is described on CHD's website as
 23 "a true story of fraud and betrayal, and an insider's view of what takes place behind the closed
 24 doors of agencies and drug companies, and with the people tasked to protect the health of
 25 American children. It's a cautionary tale of the dangers of blind trust in the government and the
 26 health-care industry." James Ottar Grundvig, *Master Manipulator: The Explosive True Story of*
 27 *Fraud, Embezzlement, and Government Betrayal at the CDC*, Store, CHILDREN'S HEALTH
 28 DEFENSE, <https://childrenshealthdefense.org/store/master-manipulator-the-explosive-true->

1 story-of-fraud-embezzlement-and-government-betrayal-at-the-cdc/ (last visited Aug 14, 2020).

2 32. Similarly, CHD’s “5G and Wireless Harms Project” publishes links to articles
3 and videos on CHD’s website, which describe the health risks of 5G and wireless networks and
4 products, and CHD’s advocacy efforts to secure a moratorium on 5G development pending
5 further scientific research and consensus on that issue. *See, e.g., The 5G Crisis: Awareness &*
6 *Accountability; Thermal and non-thermal health effects of low intensity non-ionizing*
7 *radiation: An international perspective; Resistance to 5G: Roadblock to a High Tech Future or*
8 *Warning of a Serious Health Risk?; What You Should Know About 5G Satellites: How Musk’*
9 *Sci-Fi Dreams Are Becoming Our Living Nightmare; 5G AirGig: What is It and Should You Be*
10 *Worried?; 5G/Electromagnetic Fields / Wireless Technologies; Scientists warn of potential*
11 *serious health effects of 5G; Six Italian Courts Have Ruled that Cell Phones Cause Brain*
12 *Tumors; The 5G Crisis: Awareness & Accountability*, CHILDREN’S HEALTH DEFENSE (Dec. 21,
13 2019), <https://childrenshealthdefense.org/video/the-5g-crisis-awareness-accountability/>. CHD
14 uses a review process comparable to that described *supra* to fact-check these articles and
15 publish them as peer-reviewed research or labeled opinion, where appropriate. Significantly,
16 CHD also publishes commentary debunking vaccine and 5G-hypotheses for which CHD has
17 found no credible scientific evidence. *See, e.g., D. Tachover, CHD Statement on 5G and*
18 *Coronavirus*, CHILDREN’S HEALTH DEFENSE (Apr. 10, 2020),
19 <https://childrenshealthdefense.org/news/chd-statement-on-5g-and-coronavirus/>.

20 **B. CHD’s Facebook Page.**

21 33. On or about November, 2017, CHD agreed to Facebook’s Terms to create, and
22 has since actively maintained, its Facebook page. CHD did so to broaden its internet visibility
23 and reach, make its online library more widely-accessible, and increase its fundraising
24 platform. CHD has a current Facebook community of approximately 122,830 followers. CHD
25 uploads articles or video posts from the CHD website to its Facebook page on a daily (or more
26 frequent) basis, along with other articles or video posts, and hyperlinks to CHD’s archived
27 articles of interest to its community. A follower or visitor to CHD’s Facebook page can readily
28 search the “posts” archive and retrieve all of CHD’s present and past articles concerning, inter

1 alia, the CDC's conflicts, errors, and omissions.

2 34. CHD's Facebook page is both reliable and up-to-date, as those terms are
 3 commonly understood. The articles and information that CHD shares with its followers and
 4 the public are science-based and fact-checked before publication on its Facebook page. The
 5 facts cited in every article include linked citations to other published works. Articles submitted
 6 that do not follow that protocol are not published as CHD articles, but rather as editorials
 7 where the opinions expressed are not necessarily the opinions of CHD or *The Defender*. CHD
 8 works with content-writers who are known to CHD to be reliable and trustworthy. CHD's
 9 editorial process for any article is as follows: idea; article request/written; article submitted,
 10 edited, citations/sources/links checked; website layout; image assigned for article; publish on
 11 website in designated categories (child health, toxins, etc.); article laid out in *The Defender*
 12 newsletter template, then emailed to subscribers. Finally, CHD adds the article to its social
 13 media accounts on Facebook, Twitter, Instagram, and YouTube (if applicable), and emails it to
 14 affiliated publishers. In short, CHD's internal fact-checking process ensures that all content
 15 that CHD posts to its Facebook page is accurate and well-sourced from credible sources and
 16 peer-reviewed studies.

17 35. As set forth *infra*, CHD did not use its Facebook page to post any content that
 18 breached Facebook's terms or community standards or was otherwise "unlawful, misleading,
 19 discriminatory or fraudulent." Terms at ¶ 3(2)(1).

20 36. Under Section 1 of its adhesion contract Terms, Facebook describes its products
 21 and services to include, *inter alia*, "[to] empower you to express yourself and communicate
 22 about what matters to you" and one of those ways to "express yourself" is "adding content to
 23 your profile." Of its many reserved rights, Facebook notably does *not* retain the right to create
 24 or add its own content to a user's page, except for a specified reservation for "ads, offers, and
 25 other sponsored content [. . .] which [o]ur partners pay us to show [] to you." In Section 3(1),
 26 Facebook reiterates that the user "own[s] the content that [the user] create[s] and share[s] on
 27 Facebook[.] [. . .] and nothing in these Terms takes away the rights that [user] have to [their]
 28 own content." In Section 4(3), Facebook reiterates that "[w]e do not control or direct what

1 people and others do or say, and we are not responsible for their actions or conduct (whether
 2 online or offline) or any content that they share (including offensive, inappropriate, obscene,
 3 unlawful and other objectionable content.”).

4 37. With respect to “harmful conduct,” Facebook’s Terms permit it to “detect misuse
 5 of [its] Products, harmful conduct towards others and situations where [it] may be able to help
 6 support or protect [its] community.” Facebook retains limited rights, e.g., “offering help,
 7 removing content, blocking access to certain features, disabling an account or contacting law
 8 enforcement[.] [and] shar[ing] data with other Facebook companies when [it] detect[s] misuse
 9 or harmful conduct[.]” Here, too, Facebook does not reserve or retain the right to create its own
 10 content on a user’s page. Terms ¶¶ 1, 3(2)(3).

11 38. Facebook’s Terms purport to limit Facebook’s liability “to the fullest extent
 12 permitted by applicable law.” Terms ¶ 4(3). The “applicable law” is California Civil Code
 13 section 1668, which establishes that “[a]ll contracts which have for their object, directly or
 14 indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the
 15 person or property of another, or violation of law, whether willful or negligent, are against the
 16 policy of the law.”

17 39. On or about August 31, 2020, Facebook purported to amend its Terms ¶ 3.2, to
 18 provide that effective October 1, 2020, Facebook “can remove or restrict access to your
 19 content, services, or information if we determine that doing so is reasonably necessary to avoid
 20 or mitigate adverse legal or regulatory impacts to Facebook.”

21 **C. The CDC/Facebook Partnership.**

22 40. In 1992, Congress authorized the establishment of the National Foundation for
 23 the Centers for Disease Control and Prevention (“the CDC Foundation”) to support the CDC.
 24 The CDC Foundation was created as a nonprofit private corporation, purportedly not itself an
 25 expressly-designated agency or instrumentality of the Federal Government. 42 U.S.C. §§ 280e-
 26 11(a), (b) (“Public Health Services Act”). The CDC Director may accept and use, on behalf of
 27 the Federal Government, any gift or donation, or any voluntary services from the CDC
 28 Foundation for the purpose of aiding or facilitating the work of the CDC. 42 U.S.C. §§ 280e-

1 11(h)(1), (h)(2)(A). “The CDC Foundation's mission statement is to help CDC ‘do more, faster
 2 by forging effective partnerships between CDC and others to fight threats to health and
 3 safety.’” *H. Rept. 109-510 - Amending the Public Health Service Act with Respect to the
 4 National Foundation for the Centers for Disease Control and Prevention*, 109th Congress
 5 (2005-2006), Committee Reports, CONGRESS.GOV, [https://www.congress.gov/congressional-
 6 report/109th-congress/house-report/510/1](https://www.congress.gov/congressional-report/109th-congress/house-report/510/1) (last visited Nov. 11, 2020).

7 41. The CDC Foundation also demands “deference to the CDC’s final judgment on
 8 all matters of scientific findings, facts or recommendations” as a “characteristic for
 9 collaboration.” *Guiding Principles For Partner Collaboration*, CDC FOUNDATION (2020),
 10 <https://www.cdcfoundation.org/guiding-principles-partner-collaboration> (last visited Nov. 11,
 11 2020).

12 42. The Congressional Research Service recently observed that “[I]t might be
 13 difficult for stakeholders to verify on an ongoing basis that the activities of a quasi-
 14 governmental entity, established by statute and vested with the power to carry out some public
 15 purpose, are directed to the public good rather than private gain without the routine
 16 accountability and transparency provided by this legal framework.” *Agency-Related Nonprofit
 17 Research Foundations and Corporations*, CRS Report, CONGRESSIONAL RESEARCH SERVICE
 18 (Dec. 9, 2019), <https://fas.org/sgp/crs/misc/R46109.pdf>.

19 43. At least one former CDC researcher has put it more bluntly, describing the quasi-
 20 governmental CDC Foundation as a “professional money-laundering facility” (Sheila Kaplan,
 21 *Firm Pays Government to Challenge Pesticide Research*, TYPE INVESTIGATIONS (Mar. 1,
 22 2011), [https://www.typeinvestigations.org/investigation/2011/03/01/firm-pays-government-
 23 challenge-pesticide-research/](https://www.typeinvestigations.org/investigation/2011/03/01/firm-pays-government-challenge-pesticide-research/) (last visited Nov. 11, 2020), and others have alleged that the
 24 CDC Foundation turns pharmaceutical industry monies into recommendations favorable to that
 25 industry, all with the federal government’s seal of approval. *CrossFit Settles Lawsuit with HHS
 26 After Agency Releases Emails Showing Continued Efforts to Conceal Donations*, CROSSFIT
 27 (Nov. 23, 2019), [https://www.crossfit.com/battles/crossfit-settles-lawsuit-with-hhs-after-
 28 agency-agrees-to-release-redacted-emails](https://www.crossfit.com/battles/crossfit-settles-lawsuit-with-hhs-after-agency-agrees-to-release-redacted-emails) (last visited Nov. 11, 2020). Still others have

questioned donations made by the Coca-Cola Company to the CDC Foundation for research and other activities associated with obesity and diet issues. (Sheila Kaplan, *New C.D.C. Chief Saw Coca-Cola as Ally in Obesity Fight*, THE NEW YORK TIMES (Jul. 22, 2017), <https://www.nytimes.com/2017/07/22/health/brenda-fitzgerald-cdc-coke.html>; Nason Maani Hessari, Gary Ruskin, and Martin McKee, et al., *Public Meets Private: Conversations Between Coca-Cola and the CDC*, THE MILBANK QUARTERLY, vol. 97, no. 1, pp. 74-90 (2019).

44. According to May 15, 2015 staff editorial in the British Medical Journal (“BMJ”), “Despite the agency’s disclaimer, the CDC does receive millions of dollars in industry gifts and funding, both directly and indirectly, and several recent CDC actions and recommendations have raised questions about the science it cites, the clinical guidelines it promotes and the money it is taking.” The BMJ further described the CDC’s relationship with private actors, as an example of those private actors’ skill in transforming a regulator into the vehicle for their own “classic stealth marketing in which industry puts their message in the mouths of a trusted third party.” Jeanne Lenzer, *Centers for Disease Control and Prevention: protecting the private good?* THEBMJ, BMJ 2015;350:h2362 (May 15, 2015), <https://www.bmj.com/content/350/bmj.h2362>.

45. The BMJ editorial quotes UCLA Professor of Medicine Jerome R. Hoffman: “Most of us were shocked to learn the CDC takes funding from industry... it is outrageous that industry apparently is allowed to punish the CDC if the agency conducts research that has the potential to cut into profits.” Jeanne Lenzer, *Centers for Disease Control and Prevention: protecting the private good?*, *supra*, THEBMJ, BMJ 2015;350:h2362, <https://www.bmj.com/content/350/bmj.h2362>.

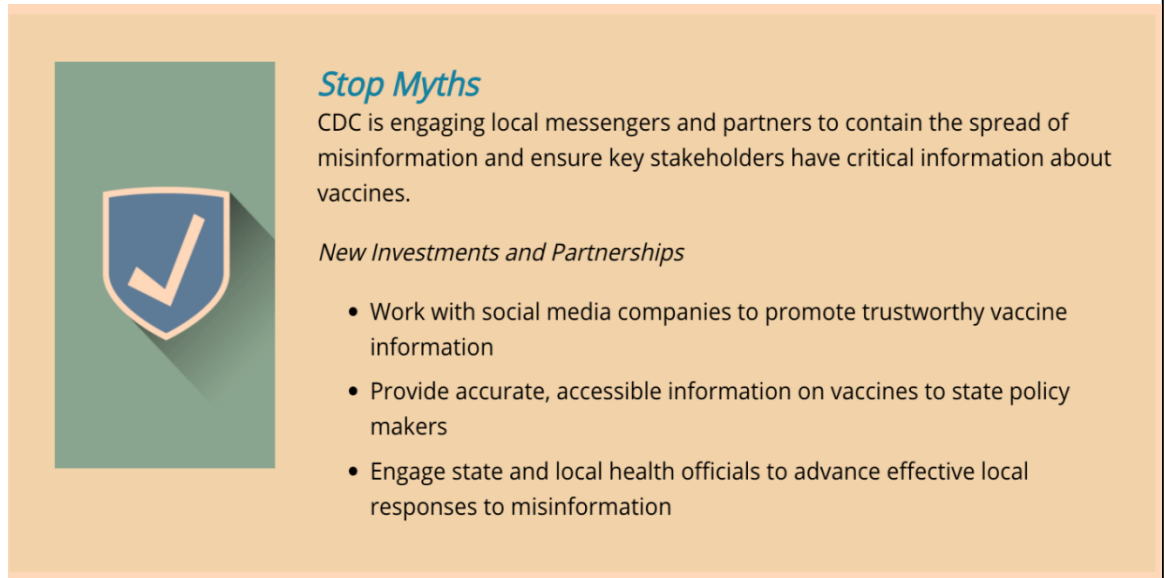
46. In 2014, Zuckerberg personally donated \$25 million to the CDC Foundation’s Global Disaster Relief Fund through Silicon Valley Community Foundation (“SVCF”), which runs a donor advised fund for CZI. *CDC Foundation Receives \$25 Million Donation From Mark Zuckerberg And Dr. Priscilla Chan For Ebola Response*, CDC FOUNDATION (Oct. 14, 2014), <https://www.cdcfoundation.org/pr/cdc-foundation-receives-25-million-donation-mark-zuckerberg-and-priscilla-chan-ebola-response> (last visited Nov. 12, 2020). In 2020, “in

1 addition to our other donations,” Zuckerberg announced that Facebook would donate \$10
 2 million to the CDC Foundation’s Combat Coronavirus Fundraiser, and \$10 million to the
 3 WHO. The CDC Foundation announced that it would use “the support of Facebook and its
 4 people to help fill gaps and mobilize resources to address fast emerging needs posed by the
 5 virus.” *CDC Foundation Launches Facebook Fundraiser To Benefit Coronavirus Response*
 6 *Efforts, Featuring \$10 Million Facebook Match*, CDC FOUNDATION (Mar. 24, 2020)
 7 <https://www.cdcfoundation.org/pr/2020/Facebook-fundraiser-supports-coronavirus-response>
 8 (last visited Nov. 12, 2020); *Facebook’s \$10 Million Match Helps CDC Foundation Fight*
 9 *Coronavirus*, CDC FOUNDATION (Mar. 24, 2020),
 10 [https://www.cdcfoundation.org/blog/facebooks-10-million-match-helps-cdc-foundation-fight-](https://www.cdcfoundation.org/blog/facebooks-10-million-match-helps-cdc-foundation-fight-coronavirus)
 11 [coronavirus](https://www.cdcfoundation.org/blog/facebooks-10-million-match-helps-cdc-foundation-fight-coronavirus) (last visited Nov. 12, 2020).

12 47. Facebook is a corporate partner of the CDC Foundation and the Silicon Valley
 13 Community Foundation is a foundation partner as well. *Our Partners: Foundations*, CDC
 14 FOUNDATION, <https://www.cdcfoundation.org/partner-list/foundations> (last visited Nov. 12,
 15 2020). The CDC Foundation also receives substantial contributions from the pharmaceutical
 16 industry.

17 48. Facebook is listed as a “partner” on the CDC Foundation’s website under the
 18 “partners” page, although the total amounts of its donations, and those of Zuckerberg
 19 individually or through SVCF, are not publicly-disclosed. *Our Partners: Corporations*, CDC
 20 FOUNDATION, <https://www.cdcfoundation.org/partner-list/corporations> (last visited Nov. 12,
 21 2020).

22 49. CDC’s “*Vaccine With Confidence*” strategic initiative clearly identifies the use
 23 of social media partners to drive vaccine uptake.
 24
 25
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 27
 28



50.

Vaccinate with Confidence, CDC (Oct. 11, 2019),
<https://www.cdc.gov/vaccines/partners/downloads/Vaccinate-Confidently-2019.pdf>.

51. The CDC is using Facebook in particular to accomplish its goal of targeting health information. “CDC encourages the strategic use of Facebook to effectively and inexpensively reach individuals with personalized and targeted health information.” *Social Media at CDC*, Tools / Facebook, CDC, <https://www.cdc.gov/socialmedia/tools/facebook.html> (last visited Nov. 12, 2020). “Facebook, as with other social media tools, is intended to be part of a larger integrated health communications strategy or campaign developed under the leadership of the Associate Director of Communication Science (ADCS) in the Health Communication Science Office (HCSO) of CDC’s National Centers, Institutes, and Offices (CIOs).” *Social Media at CDC*, Guidelines & Best Practices / Facebook Guidelines and Best Practices, CDC, <https://www.cdc.gov/socialmedia/tools/guidelines/facebook-guidelines.html> (last visited Nov. 12, 2020).

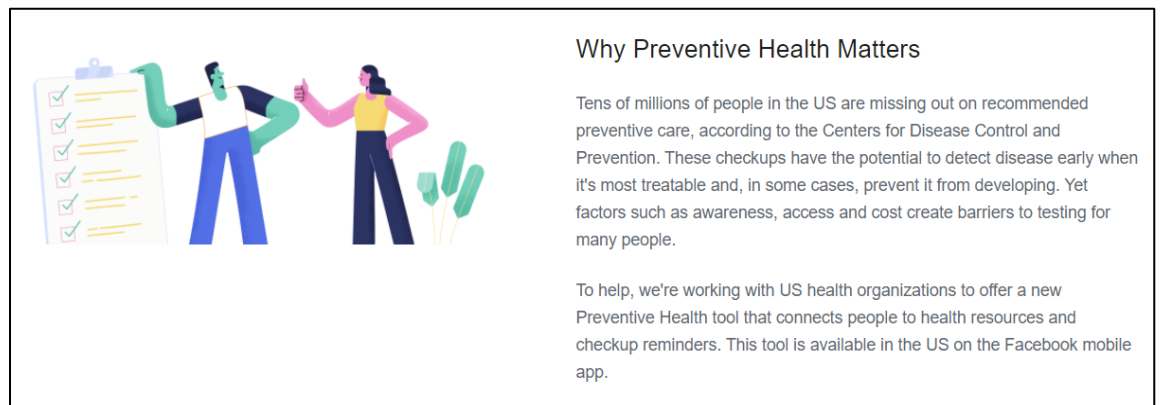
52. Zuckerberg has stated publicly that Facebook is working with both the CDC and the WHO: “We work with the [Centers for Disease Control and Prevention] and we work with the [World Health Organization] and trusted health organizations to remove clear misinformation about health-related issues that could cause an imminent risk of harm.”

1 *AXIOS on HBO: Mark Zuckerberg on Misinformation* [Video], HBO,
 2 <https://www.youtube.com/watch?v=E5yyInwI7tw> (last visited Nov. 12, 2020).

3 53. In mid-October 2020, Facebook updated its internal public health partnership
 4 strategy. It is now working even more closely with the CDC to meet ostensible public health
 5 goals including pushing for flu vaccine uptake, and laying the groundwork for pushing
 6 COVID-19 vaccine uptake when available.

7 54. For example, Facebook recently launched a new public health app, “*Preventive*
 8 *Health*,” which connects people to public health authority resources. Facebook acknowledges
 9 it has partnered with the CDC in its development of the app.

10 55. “‘Preventive Health’ is a new tool on Facebook that connects people to health
 11 resources and checkup recommendations from leading health organizations.”



19 56. *Connecting People With Health Resources*, FACEBOOK, <https://preventivehealth.facebook.com/>
 20 (last visited Nov. 12, 2020).

21 57. Facebook’s “Preventive Health” App will provide reminders to people to take
 22 vaccines, and directly implements a public health strategy recommended by the CDC for
 23 increasing vaccination coverage in adults. “Starting today, Facebook will let users choose to
 24 get personalized reminders about health care tests and vaccines.” Mary Beth Griggs,
 25 *Facebook’s new Preventive Health tool pushes people to advocate for their health*, THE VERGE
 26 (Oct. 28, 2019), [https://www.theverge.com/2019/10/28/20936541/facebook-preventative-](https://www.theverge.com/2019/10/28/20936541/facebook-preventative-health-cancer-heart-disease-flu-tool)
 27 [health-cancer-heart-disease-flu-tool](https://www.theverge.com/2019/10/28/20936541/facebook-preventative-health-cancer-heart-disease-flu-tool). The reminder system was proposed by the CDC and
 28 implemented by Facebook as a way to increase adult vaccination that can reach a large part of

1 the populace. Additionally, there is the potential for monetization as the app functions as a
 2 digital platform where new vaccines and FDA-approved treatments can be promoted to a wide
 3 audience. *Adult Vaccination Resources*, Vaccines for Adults, CDC,
 4 <https://www.cdc.gov/vaccines/hcp/adults/for-practice/reminder-sys.html> (last visited Nov. 12,
 5 2020).

6 58. This rollout furnishes additional evidence of a close and ongoing working
 7 relationship between the CDC and Facebook both to encourage universal vaccination, and by
 8 reasonable inference, to censor, flag, or demote contrary views. The CDC and (with the CDC's
 9 express consent) the WHO have worked closely with Facebook to determine what features
 10 would be appropriate on Facebook's platform, what information to censor, and which groups,
 11 such as CHD, to demonetize. CHD requires process to ascertain, *inter alia*, whether or to what
 12 extent the CDC and WHO themselves have flagged specific CHD content on Facebook's
 13 platform for Facebook to remove, demote, or fact-check. *See, e.g., Social media giants agree*
 14 *package of measures with UK Government to tackle vaccine disinformation*, GOV.UK (Nov. 8,
 15 2020), [https://www.gov.uk/government/news/social-media-giants-agree-package-of-measures-](https://www.gov.uk/government/news/social-media-giants-agree-package-of-measures-with-uk-government-to-tackle-vaccine-disinformation)
 16 [with-uk-government-to-tackle-vaccine-disinformation](https://www.gov.uk/government/news/social-media-giants-agree-package-of-measures-with-uk-government-to-tackle-vaccine-disinformation) (Facebook accepting direction and
 17 command – including content flagged to them by the government -- directly from U.K. public
 18 officials to censor critical information and publish approved information relating to
 19 Coronavirus vaccine).

20 59. In these and other nonobvious ways, including with respect to Facebook's
 21 censorship of CHD's COVID-19-related posts, the CDC has entered into an ongoing symbiotic
 22 relationship with Facebook, which substantially benefits the government's and social media
 23 giant's policies and priorities. As alleged *infra*, the CDC has given Facebook its imprimatur to
 24 implement CDC/WHO-preclusive algorithms under a joint understanding to censor, flag,
 25 and/or demote CHD's posts critical of the CDC generally, and/or its vaccine recommendations
 26 specifically, and damage or destroy CHD's capacity to sustain itself financially.

27 ///

28 ///

D. Defendants’ Scheme to Defraud.

1. Overview.

60. On February 14, 2019, Rep. Schiff wrote a public letter addressed to Zuckerberg “[a]s a Member of Congress who is deeply concerned about declining vaccination rates around the nation,” pointedly urging that Facebook implement specific algorithms to identify, censor and remove all so-called “vaccine misinformation,” and reject all paid advertising from the sources of such “misinformation.” *Schiff Sends Letter to Google, Facebook Regarding Anti-Vaccine Misinformation*, News/Press Releases, CONGRESSMAN ADAM SCHIFF (Feb. 14, 2019), <https://schiff.house.gov/news/press-releases/schiff-sends-letter-to-google-facebook-regarding-anti-vaccine-misinformation>.

61. The term “vaccine misinformation” (as Rep. Schiff defined it, and as Facebook implemented it) is a euphemism for *any* expression of skepticism toward government and industry pronouncements about vaccine safety and efficacy, or of reasons why parents or their children’s physicians might decline to follow the CDC’s full “recommended vaccine schedule,” regardless of whether those expressions are true or not. Thus, Rep. Schiff provided a substantive standard — deference to CDC/WHO pronouncements conclusively presumed to be “authoritative” — by which Facebook should identify and censor vaccine “misinformation” on its platform. The term “vaccine misinformation” does not, for example, include erroneous, misinformed or fraudulent statements made by pharmaceutical companies, or the CDC, to promote vaccines.

62. Rep. Schiff wrote, “I acknowledge that it may not always be a simple matter to determine when information is medically accurate, nor do we ask that your platform engage in the practice of medicine.” Yet, that is precisely what Rep. Schiff asked Facebook to do, and this case shows the resulting harms from government engaging with a social media platform to arbitrate scientific truth in that manner.

63. Rep. Schiff ended his public letter to Zuckerberg:

Specifically, I request that you provide answers on the following questions:

- (1) Does content which provides medically inaccurate information about vaccines violate your terms of service?
- (2) What action(s) do you currently take to address misinformation related to vaccines on your platforms? Are you considering or taking additional actions?
- (3) Do you accept paid advertising from anti-vaccine activists and groups on your platforms? How much has been spent in the past year on advertising on this topic?
- (4) What steps do you currently take to prevent anti-vaccine videos or information from being recommended to users, either algorithmically or as a suggested search result?

I appreciate your timely response to these questions and encourage you to consider what additional steps you can take to address this growing problem. As more Americans rely on your services as their primary source of information, it is vital that you take that responsibility with the seriousness it requires, and nowhere more so than in matters of public health and children's health. Thank you for your attention to this important topic.

Id.

64. Rep. Schiff's pointed questions and requests clearly express his own definite position on the science, and his expectation that Facebook and Zuckerberg would adhere to and implement policies consistent with that position. On information and belief, Zuckerberg met personally with Rep. Schiff subsequently to discuss, *inter alia*, Facebook's compliance with Rep. Schiff's February 14, 2019 public letter and press release, and those specific standards which were or would be used to identify and censor vaccine "misinformation." At the same time and subsequently, in his role as Chairman of the House Intelligence Committee, Rep. Schiff stated publicly that Congress could or should "make changes to" the law that does not currently hold social media companies liable for third-party content on their platforms. *See, e.g., Hearing by Congress on "deepfakes" and artificial intelligence* [Video], GUARDIAN NEWS (June 13, 2019), <https://www.youtube.com/watch?v=lArPEDS0GTA>. Rep. Schiff told reporters that, "if the social media companies can't exercise a proper standard of care when it comes to a whole variety of fraudulent or illicit content, then we have to think about whether

1 that immunity still makes sense. These are not nascent industries or companies that are
 2 struggling for viability; they're now behemoths, and we need them to act responsibly." K.
 3 Waddell, *A new attack on social media's immunity*, AXIOS (June 13, 2019),
 4 [https://www.axios.com/social-media-immunity-section-230-f15ac071-32e9-4e33-81e6-](https://www.axios.com/social-media-immunity-section-230-f15ac071-32e9-4e33-81e6-4c7ebadaea5e.html)
 5 [4c7ebadaea5e.html](https://www.axios.com/social-media-immunity-section-230-f15ac071-32e9-4e33-81e6-4c7ebadaea5e.html).

6 65. On March 4, 2019, Lyn Redwood, CHD President, sent a 9-page letter addressed
 7 to "Mark Zuckerberg, Chairman and Chief Executive Officer, Facebook Inc., 1 Hacker Way,
 8 Menlo Park, CA 94025" and offered in rebuttal of Representative Schiff's letter. From his
 9 public statements and adverse motives, *see infra*, it may be reasonably inferred that Zuckerberg
 10 was personally and directly involved in decisions and actions which Facebook took to censor
 11 and/or "fact-check" CHD's individual posts, and knowingly mislead users about the
 12 truthfulness of CHD's posts, and on the CHD account level, deliberately mislead users about
 13 CHD's page's reliability, and remove its advertising and fundraising tools. Zuckerberg and/or
 14 the Doe defendants responsible for those actions either read CHD's March 4, 2019 letter or
 15 rejected it without reading, but in either event, they did no investigation of it and proceeded
 16 within days to publish their warning label and "fact-checks" with a "high degree of awareness
 17 of ... probable falsity," "serious doubts," or "reckless disregard" as to [their] truth. *Harte-*
 18 *Hanks Commc'ns Inc. v. Cunningham*, 491 U.S. 657, 667 (1989).

19 66. Because it is highly relevant to Plaintiff's claims, the letter is quoted extensively
 20 here, and attached to this Complaint as Exhibit "A." CHD's letter explains its position with
 21 respect to vaccine safety and Facebook's role as content moderator, as follows:

22 We, too, are highly concerned that the public is being misinformed
 23 about vaccines, and we agree that Facebook could play a positive
 24 role in helping to resolve this problem. *But we strongly disagree*
 25 *that the means by which Facebook can do so is by preventing users*
 26 *from seeing information that calls into question government*
 27 *policies related to vaccinations. On the contrary, the means by*
 28 *which Facebook can help empower people to make an informed*
choice is to facilitate a free market of ideas and let users determine
for themselves the value of content that appears in their newsfeeds.

1 [Representative Schiff's] true criterion for determining what
 2 information constitutes a "threat" is not whether it is truthful and
 3 accurate, but whether or not it accords with the goal of achieving
 4 high vaccination rates. [. . .] an implicit assumption underlying Mr.
 5 Schiff's criterion for determining what constitutes
 6 "misinformation" is that the CDC is infallible in its vaccine
 7 recommendations. We emphatically disagree and must reject this
 8 assumption as totally illogical and unscientific.

9 Mr. Schiff would have you take steps to prevent "vaccine
 10 misinformation" from proliferating, but who is to decide what
 11 constitutes misinformation? Which party to the debate can claim a
 12 monopoly on truth? [. . .] Efforts to stifle discussion and debate
 13 about such an important issue constitute a serious threat to both our
 14 health and our liberty.

15 The statement assumes that all vaccines are safe and effective for
 16 everybody, but what there is a scientific consensus about is that
 17 that is absolutely not true. Indeed, it is meaningless to treat
 18 "vaccines" as a product concept when speaking in terms of safety
 19 and effectiveness because each vaccine has a different profile.
 20 There is a risk-benefit analysis that must be done for each one. Not
 21 all vaccines are considered safe. Not all are considered effective. In
 22 the scientific literature, there is a great deal of uncertainty and
 23 debate about the safety and effectiveness of individual vaccines, as
 24 well as their combined effects and the long-term consequences of
 25 vaccinating children according to the CDC's schedule.

26 [. . .]

27 *Increasingly, we are learning from scientific research that there*
 28 *are opportunity costs associated with vaccination.* [. . .] It is a great
 cause for concern that public health officials simply do not take
 such opportunity costs into consideration when formulating public
 vaccine policies.

In addition to disregarding the variable profile of each vaccine, Mr.
 Schiff's statement ignores the variability in children's responses to
 vaccinations. The risk-benefit must be conducted for each vaccine
 and for every individual child. Not every child is at the same risk
 from a given infectious disease. Not every child will have the same
 immune response to a vaccine intended to prevent that disease. And

1 not every child is at the same risk of harm from the vaccine. That
2 there are subpopulations of children who are at higher risk of being
3 killed or permanently injured by vaccines is well recognized within
4 the scientific community.

5 [. . .]

6 Unfortunately, the public health objective of achieving high
7 vaccination rates is not necessarily conducive to the objective of
8 improving public health, and the same cognitive dissonance evident
9 in the FDA's remark is reflected in Mr. Schiff's objection to
10 information being shared on Facebook that isn't conducive to the
11 government's goal of persuading or coercing parents through
12 mandates to strictly comply with the CDC's routine childhood
13 vaccine schedule.

14 Certainly, to inform parents about this compensation program and
15 the legal immunity for vaccine manufacturers might cause them to
16 think twice about vaccinating their children. Contrary to Mr.
17 Schiff's criterion, it does not follow that they shouldn't be
18 informed.

19 [. . .]

20 The CDC itself is a leading purveyor of misinformation about
21 vaccines. For example, a literature review by the prestigious
22 Cochrane Collaboration on the safety and effectiveness of the
23 influenza vaccine concluded that the fundamental assumptions
24 underlying the CDC's universal flu shot recommendation are
25 unsupported by the scientific evidence and, furthermore, that the
26 CDC has deliberately misrepresented the science in order to
27 support its policy.

28 [. . .]

So, if Facebook is going to start preventing the spread of vaccine
misinformation, is it going to block links to pages from the CDC's
website wherein such dangerously misleading claims are made?

[. . .]

To sum up, there is indeed a serious problem today with respect to
the propagation of misinformation about vaccines, but there are no

greater purveyors of vaccine misinformation than the government and corporate news media. *It is entirely inappropriate for elected government officials to be instructing media companies to censor criticism of entire categories of pharmaceutical products.*

[. . .]

Without prejudice to your company's right to determine your service's own terms of use, we believe that respect for this human right is the value that Facebook should be upholding, along with the right to informed consent, which is one of the most fundamental ethics in the practice of medicine.

A true and correct copy of the letter is attached as Exhibit "A" hereto. *Letter to Facebook, CHILDREN'S HEALTH DEFENSE* (Mar. 4, 2019), <https://childrenshealthdefense.org/wp-content/uploads/FINAL-CHD-Letter-to-Facebook-1.pdf> (emphases added).

67. Nonetheless, Facebook conducted no investigation whatsoever to confirm or refute the material facts asserted in CHD's March 4, 2019 letter. Rather, Facebook and Zuckerberg personally determined that the course of action Rep. Schiff actively encouraged — to work and act in concert with individuals or officers at the CDC and WHO, to implement algorithms to identify any posts critical to CDC/WHO-pronouncements — would assist Facebook to avoid any legislative rollback of "service provider" immunity from liability under the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c)(1). The close sequence of events which followed closely upon Rep. Schiff's letter to Zuckerberg suggest that Schiff's pointed requests had an immediate effect on Facebook and that Zuckerberg had determined that it was in Facebook's interests to cooperate with the government.

68. On March 7, 2019, Monika Bickert, Facebook's Vice President for Global Policy Management, issued an online press release stating that:

We are working to tackle vaccine misinformation on Facebook by reducing its distribution and *providing people with authoritative information on the topic*. We are starting by taking a series of steps: We will reduce the ranking of groups and Pages that spread misinformation about vaccinations in News Feed and Search.

1 These groups and Pages will not be included in recommendations
2 or in predictions when you type into Search.

3 When we find ads that include misinformation about vaccinations,
4 we will reject them. We also remove related targeting options, like
5 “vaccine controversies.” For ad accounts that continue to violate
6 our policies, we may take further action, such as disabling the ad
7 account.

8 We won’t show or recommend content that contains
9 misinformation about vaccinations on Instagram Explore or
10 hashtag pages.

11 We are exploring ways to share educational information about
12 vaccines when people come across misinformation on this topic.

13 **Update on April 26, 2019 at 10AM PT:** We may also remove
14 access to our fundraising tools for Pages that spread
15 misinformation about vaccinations on Facebook.

16 How This Will Work

17 Leading global health organizations, such as the World Health
18 Organization and the US Centers for Disease Control and
19 Prevention, have publicly identified verifiable vaccine hoaxes. If
20 these vaccine hoaxes appear on Facebook, we will take action
21 against them.

22 For example, if a group or Page admin posts this vaccine
23 misinformation, we will exclude the entire group or Page from
24 recommendations, reduce these groups and Pages’ distribution in
25 News Feed and Search, and reject ads with this misinformation.

26 We also believe in providing people with additional context so they
27 can decide whether to read, share, or engage in conversations about
28 information they see on Facebook. We are exploring ways to give
people more accurate information from expert organizations about
vaccines at the top of results for related searches, on Pages
discussing the topic, and on invitations to join groups about the
topic. We will have an update on this soon.

1 We are fully committed to the safety of our community and will
 2 continue to expand on this work.

3 *Combating Vaccine Misinformation*, FACEBOOK, [https://about.fb.com/news/2019/03/](https://about.fb.com/news/2019/03/combating-vaccine-misinformation)
 4 *combating-vaccine-misinformation* (last visited Aug 14, 2020) (emphases added).

5 69. On September 4, 2019, the WHO Director-General issued a public statement that
 6 it “welcomes the commitment by Facebook to ensure that users find facts about vaccines
 7 across Instagram, Facebook Search, Groups, Pages and forums where people seek out
 8 information and advice. *Facebook will direct millions of its users to WHO’s accurate and*
 9 *reliable vaccine information in several languages, to ensure that vital health messages reach*
 10 *people who need them the most. The World Health Organization and Facebook have been in*
 11 *discussions for several months to ensure people can access authoritative information on*
 12 *vaccines and reduce the spread of inaccuracies on Facebook and Instagram.” Vaccine*
 13 *Misinformation: Statement by WHO Director-General on Facebook and Instagram*, WORLD
 14 HEALTH ORGANIZATION (Sept. 4, 2019), [https://www.who.int/news-room/detail/04-09-2019-](https://www.who.int/news-room/detail/04-09-2019-vaccine-misinformation-statement-by-who-director-general-on-facebook-and-instagram)
 15 *vaccine-misinformation-statement-by-who-director-general-on-facebook-and-instagram*
 16 (emphases added). The WHO Director-General’s public statement strongly suggests that the
 17 WHO has been directly involved in defining what constitutes “vaccine misinformation” for
 18 Facebook. It also implies that the WHO has provided input regarding what exact features may
 19 be most effective. The CDC’s active, if “nonobvious” involvement in Facebook’s conduct may
 20 be reasonably inferred. CHD requires process to identify the government officials who
 21 participated in these pre-roll out discussions with Facebook, and the standards and practices
 22 which they discussed or agreed upon, and other facts and circumstances of the “non-obvious
 23 involvement of the State in private conduct” of Facebook and Zuckerberg. *Burton v.*
 24 *Wilmington Parking Authority*, 365 U.S. 715, 722 (1961). At all times relevant hereto, the
 25 United States was a member of the WHO, a United Nations specialized agency. Notably, under
 26 Article 71 of its Constitution, the WHO may only consult and cooperate with non-
 27 governmental national organizations *with the consent of the Government concerned. Basic*
 28 *Documents*, WORLD HEALTH ORGANIZATION (49th Ed. 2020),

1 https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=1. In light of their public
 2 statements and close affiliation on matters relating to vaccines, it is reasonable to infer that the
 3 CDC was the responsible federal agency which gave the WHO its consent on behalf of the
 4 U.S. Government to actively collaborate with Facebook. Plaintiff requires process to confirm
 5 that the CDC gave its consent to the WHO's formation of its private-public partnership with
 6 Facebook, and that the CDC itself participated in other non-obvious ways.

7 70. The same day, September 4, 2019, that the WHO publicly lauded its close
 8 collaboration with Facebook to “ensure people can access authoritative information [] and
 9 reduce the spread of inaccuracies,” Facebook synchronously published a “Warning Label” in
 10 bold black letters at the top of CHD's Facebook page, which states:

11 **This Page posts about vaccines**

12 **When it comes to health, everyone wants reliable, up-to-date**
 13 **information. The Centers for Disease Control (CDC) has**
 14 **information that can help answer questions you may have**
 15 **about vaccines.**

16 **Go to CDC.gov**

17 71. Both before and after September 4, 2019, Facebook also implemented a “fact-
 18 checking” campaign concerning content on Plaintiff's page, in further coordination with the
 19 CDC and WHO, designed to materially misrepresent Plaintiff's content. Thus, Facebook killed
 20 two birds with one stone: Facebook delivered what Rep. Schiff had forcefully requested — the
 21 “vaccine misinformation” campaign — which in turn would help it achieve the continued
 22 preservation of its desired Section 230 immunity. At the same time, Rep. Schiff's demand
 23 provided Facebook with cover for its own ulterior business motives, and pretext to launch its
 24 own fraudulent scheme to cause reputational harm and financial loss to CHD, and illicit gain to
 25 Facebook, by means of false representations and knowingly false suggestions. For Zuckerberg
 26 and the other defendants, this was a classic “win-win” proposition.

27 72. In perpetrating its fraud scheme, Facebook's modus operandi was to treat any
 28 information that does not advance the CDC and WHO's policy goal of maintaining or

1 increasing vaccination rates as “false,” “fake,” “misinformation,” or “hoax,” irrespective of its
 2 objective truth or the fact that it constitutes or qualifies as opinion. Facebook treats even the
 3 view that parents have a right to informed consent, one of the most fundamental ethics in
 4 medicine, as censorable “misinformation.” Any information related to the risks of vaccination,
 5 no matter how well-grounded in science, is labeled and censored as “misinformation.”
 6 Facebook then trained its technical means and methods on identifying and eliminating all such
 7 content under the banner of “falsity.” By contrast, Facebook broadly incorporates and
 8 promotes the CDC and WHO’s policy pronouncements on these issues as established “fact.”
 9 *Combatting Vaccine Misinformation*, FACEBOOK, *supra*, [https://about.fb.com/news/2019/03/](https://about.fb.com/news/2019/03/combating-vaccine-misinformation)
 10 [combating-vaccine-misinformation](https://about.fb.com/news/2019/03/combating-vaccine-misinformation).

11 73. The Merriam-Webster Dictionary defines “misinformation” as “incorrect or
 12 misleading information,” and defines “information” as “(1) knowledge obtained from
 13 investigation, study, or instruction; (2) intelligence, news; (3) facts, data.” *Information*,
 14 *Merriam-Webster.com*, <https://www.merriam-webster.com/dictionary/information> (last visited
 15 Aug. 14, 2020). Facebook’s charge that Plaintiff’s content is “false information” conveys to
 16 third-party users that it is demonstrably, provably false.

17 74. Additionally, on May 21, 2020, Zuckerberg reportedly stated that “misleading
 18 conspiracy theories around 5G on Facebook pose a risk of immediate physical harm” and that
 19 his Facebook “team is working urgently to remove dangerous and deadly ‘fake news’ posts
 20 about 5G.” He added that, “5G misinformation [] has led to some physical damage of 5G
 21 infrastructure. So we believe that that is leading to imminent risk of physical harm. We take
 22 down that content.” S. Keach, *Facebook’s 5G fake news poses ‘risk of immediate physical*
 23 *harm’, Zuckerberg warns*, IRISH SUN (May 21, 2020), [https://www.thesun.ie/tech/5453017/](https://www.thesun.ie/tech/5453017/facebook-5g-fake-news-mark-zuckerberg-physical-harm-masts-burning/)
 24 [facebook-5g-fake-news-mark-zuckerberg-physical-harm-masts-burning/](https://www.thesun.ie/tech/5453017/facebook-5g-fake-news-mark-zuckerberg-physical-harm-masts-burning/). In other words,
 25 Facebook takes the position that incidents of protestors (who have no connection with CHD)
 26 burning telephone poles with 5G transmitters constitutes an “imminent risk of physical harm”
 27 sufficient to warrant blocking CHD’s 5G safety content, irrespective of its truth. Thus, for
 28 Zuckerberg’s own profit, caprice, or ill will, *see infra*, Facebook untethers the “clear and

1 present danger” standard from any recognizable mooring in the First Amendment. *See, e.g.,*
 2 *Bridges v. California*, 314 U.S. 252, 263 (1941) (Black, J.) (“What finally emerges from the
 3 ‘clear and present danger’ cases is a working principle that the substantive evil must be
 4 *extremely serious* and the degree of imminence *extremely high* before utterances can be
 5 punished.”).

6 75. Facebook has an undoubted right “to control its own product, and to establish the
 7 terms with which its users, application developers, and advertisers must comply in order to
 8 utilize this product.” *Sambreel Holdings LLC v. Facebook, Inc.*, 906 F. Supp. 2d 1070, 1076
 9 (S.D. Cal. 2016). But, here, even Facebook cannot avoid liability for provable injury to
 10 Plaintiff’s property rights and intangible assets based on fraud and misrepresentation. *See, e.g.,*
 11 *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1166 (9th Cir. 2008) (en banc)
 12 (service provider may be liable where it makes answering discriminatory questions a condition
 13 for doing business on its site).

14 76. Thus, Facebook’s ownership of its platform does not give it free rein to develop,
 15 create, and publish false and misleading content on CHD’s page, or to create tags which
 16 mislead third-party users about the truthfulness of content on CHD’s pages, or to drive traffic
 17 from CHD’s page to the CDC, to advance Facebook’s adverse business interests. Facebook’s
 18 control over the manner in which its users view its website does not encompass the right to
 19 commit acts of censorship, false disparagement, and fraud.

20 77. Over the past fifteen months or longer, defendants have carried out a fraudulent
 21 scheme to misrepresent, censor, and exclude CHD’s viewpoint on vaccine and 5G network
 22 safety.

23 **2. Means and Methods of Defendants’ Scheme.**

24 78. Since on or about January 15, 2019, defendants have engaged in a scheme, plan
 25 and artifice to disparage and defraud CHD, and cause it to lose money and goodwill, and to
 26 obtain money and property by means of materially false and fraudulent pretenses,
 27 representations, and promises, through three principal methods: (A) making materially false
 28 statements; (B) omitting to disclose material facts; and (C) creating a materially deceptive

1 scheme. Defendants have created the false and misleading appearance to all third-party users
 2 that CHD is in violation of Facebook's Terms for publishing "false information" about vaccine
 3 and 5G network safety, and defendants have used that ruse to deactivate CHD's direct
 4 fundraising and reject its paid advertisements, censor CHD's content and user posts, publish
 5 materially false or misleading content on CHD's page, "shadow ban" CHD and "sandbox"
 6 third-party users, i.e., deceptively limit the reach of other CHD content to those users whom
 7 Facebook psychologically profiles as "undecided," and conceal their methods and
 8 collaborators. In truth, as defendants are fully aware, CHD has not posted any false
 9 information, promoted any false content, or violated any fundraising or other terms of service.

10 79. Defendants Facebook, Zuckerberg, Science Feedback, Poynter, , and others
 11 engaged in a scheme to defraud CHD by, among other conduct:

- 12 (A) Misrepresenting as fact to CHD that CHD's fundraising function was
 13 deactivated because CHD violated its terms of service with Facebook by
 14 posting "false information" with respect to vaccines.
- 15 (B) Misrepresenting as fact to CHD's outside ad agency that CHD's
 16 fundraising advertisements were rejected because CHD violated its terms
 17 of service with Facebook by posting "false information" with respect to
 18 vaccines. Facebook did not (nor can it) produce any evidence of actual
 19 falsity in such advertisements.
- 20 (C) Misrepresenting as fact to all third-party Facebook users by means of a
 21 "warning label" on CHD's page that the CDC has "reliable, up-to-date
 22 information about vaccines," and that such users should "go to CDC.gov,"
 23 and, by classic imputation of dishonesty, falsely suggesting that the
 24 vaccine-related content on CHD's page is not reliable, up-to-date
 25 information.
- 26 (D) Misrepresenting as facts to all third-party Facebook users that particular
 27 enumerated CHD-, RFK, Jr.- and third party-content posted on the CHD
 28 page contains "False Information Checked by independent fact-checkers,"

and to “see why” users should instead accept the opposition content posted by Facebook’s “fact-checkers” on CHD’s page as “true” information on the same subjects.

- (E) Engaging deceptive mechanisms and machine-learning algorithms, which secretly demote, hide, and/or limit the visibility and reach of CHD vaccine- and 5G network-related content (practices known as “shadow-banning” or “deboosting”) from third party users whom Facebook psychologically profiles as “undecided” (a practice known as “sandboxing”) in order to hide content from those it might sway, while misrepresenting to CHD and all third-party Facebook users that no such artificial processes or limitations have occurred.
- (F) Misrepresenting as fact to all third-party Facebook users that Facebook relies upon “independent fact-checkers” to identify and tag “false information” on CHD’s Facebook page based on a set of objectively-neutral, reliable, and up-to-date factual criteria, when the criteria that is actually applied is neither neutral, reliable, nor up-to-date, and the “fact-checkers” are in privity with, or controlled by Facebook. The absurdity of these misrepresentations hits home when one considers that Facebook and Science Feedback created a “fact-checking” exemption for climate science deniers by deeming climate disinformation ineligible for “fact-checking,” because it is “opinion.” Emily Atkin, *Facebook creates fact-checking exemption for climate deniers*, HEATED (Jun. 24, 2020), <https://heated.world/p/facebook-creates-fact-checking-exemption>.
- (G) Misrepresenting as fact to third-party Facebook users that CHD’s 5G-related content was demoted because it poses an “imminent risk of physical harm,” when Facebook took this action solely to advance its own economic interests in 5G development and deployment.

- (H) Misrepresenting as fact to all third-party Facebook users that users such as CHD who have had content removed from or tagged on its platform, can appeal that decision either to Facebook’s content moderator panel, or to an “independent” “Oversight Board,” and that in making such determinations, Facebook does not have any conflicts of interest that compromise its judgment. M. Zuckerberg, *Facebook’s commitment to the Oversight Board*, FACEBOOK (Sept. 2019), <https://about.fb.com/wp-content/uploads/2019/09/letter-from-mark-zuckerberg-on-oversight-board-charter.pdf>.
- (I) Concealing the extent to which Facebook actively collaborated with Rep. Schiff, the CDC and WHO, inter alia, to implement their overall scheme.
- (J) Concealing their overall scheme by these and other deceptions, including false and disparaging statements about CHD to users of CHD’s Facebook page, and to other third parties.

80. Among the means and methods by which these defendants carried out the scheme to defraud Plaintiff were their transmission by means of wires in interstate commerce of the following telephone calls, emails and/or online communications that contained materially false and misleading information, or made use of the wires in furtherance thereof, and proximately caused damages, including

(1) falsely disparaging "warning label"; (2) materially deceptive use of "fact-checkers"; (3) disabling CHD's fundraising tools, donate button, and ads; (4) demoting CHD’s 5G-related posts in bad faith; (5) disabling CHD's right to "appeal"; and (6) concealment of the overall scheme.

3. Falsely Disparaging Warning Label.

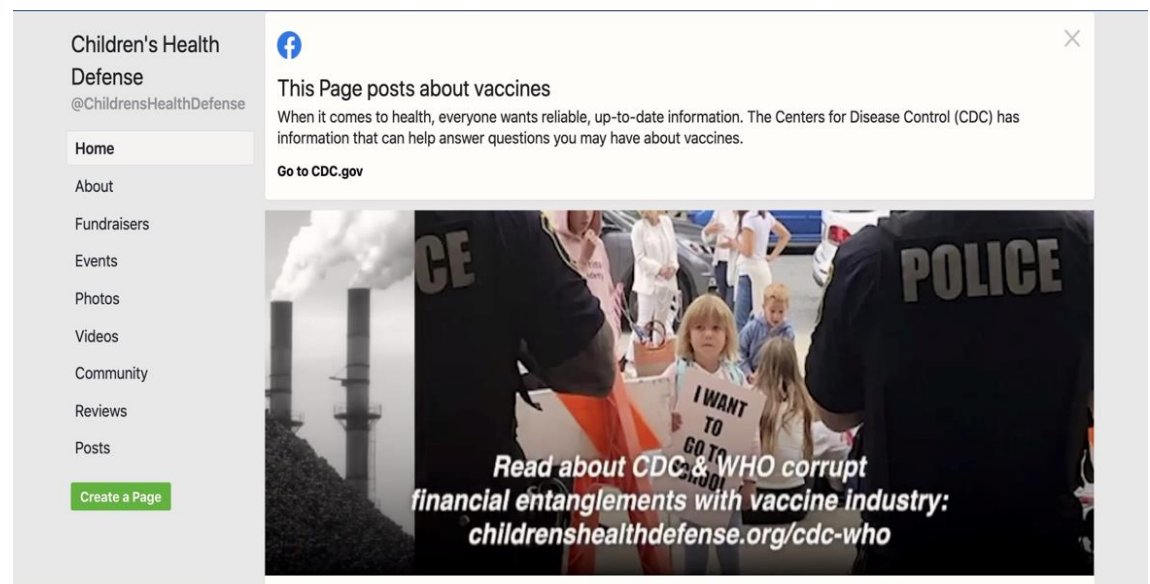
81. As alleged *supra*, on September 4, 2019, after “several months of discussion” with the WHO (*Vaccine Misinformation: Statement by WHO Director-General on Facebook and Instagram*, *supra*, <https://www.who.int/news-room/detail/04-09-2019-vaccine->

misinformation-statement-by-who-director-general-on-facebook-and-instagram), Facebook published a Warning Label in bold black letters at the top of CHD's Page, which states:

This Page posts about vaccines

When it comes to health, everyone wants reliable, up-to-date information. The Centers for Disease Control (CDC) has information that can help answer questions you may have about vaccines.

Go to CDC.gov



82.

83. Facebook re-publishes this disparaging falsehood every time a user uploads CHD's Facebook page, as has occurred literally hundreds of thousands of times since September 4, 2019.

84. Facebook's warning label conveys in clear terms to any user that what they see on CHD's page is not reliable and not up-to-date, and it directs the user instead to "go to CDC.gov" for reliable and up-to-date "information" about vaccines. Any user visiting a webpage scans the immediately-visible content before scrolling down to view the remainder of the content. Consequently, the top banner space of any webpage is valuable "screen real-estate" where prime content can be shown. Facebook's intended effect is to deprive CHD of this screen space and to redirect users away from CHD's page to the CDC website. Zuckerberg

publicly boasts that his “warning labels” and “fact-checks” effectively divert 95% or more of all users from clicking through to the actual content. *Entire CNN April 16 Coronavirus Town Hall* [Video], CNN BUSINESS (Apr. 17, 2020), <https://www.cnn.com/videos/business/2020/04/17/entire-april-16-coronavirus-town-hall-part-5-sot-vpx.cnn>.

85. Facebook’s use of the warning label effectively reduces third party user traffic to CHD’s page in at least three ways: First, it redirects a certain percentage of users (known only to Facebook) toward “authoritative sources,” who will not return to view the material deemed “misinformation.” Second, it directly targets seekers of information (the most important target audience) with the information that governmental authorities want them to see. Third, it intentionally and by necessary implication undermines the credibility and message of the source (CHD’s page) where the pop-up warning feature is placed. As customary and usual Silicon Valley practice, such features are heavily tested using A/B testing for effectiveness prior to widespread deployment.

86. On or about September 10, 2019, in response to Facebook’s disparaging warning label, CHD added text to the top of its Facebook page that states: “Read about CDC & WHO corrupt financial entanglements with vaccine industry: childrenshealthdefense.org/cdc-who.”

4. Materially Deceptive use of “Fact-Checkers.”

a. Facebook/”Fact-Checker” Agency Relationship.

87. Facebook and Zuckerberg personally developed their “fact-checker” apparatus in a concerted effort to cloak Facebook’s censorship activities with Section 230(c)(1) immunity for hosting content nominally “created” by third parties. But, in reality, Facebook maintains supervision and control over many, if not all, aspects of the “fact-checker” processes connected to CHD’s posts. By its own engagement with those overlays, warnings, and “fact-check” explanations, Facebook and Zuckerberg had knowledge of their material falsity, or acted in reckless disregard for the truth.

88. First, Facebook deployed its own employees and artificial intelligence (“AI”) machine-learning mechanisms to identify and flag the CHD posts at issue (including any CHD

posts which were originally flagged for Facebook by the CDC or WHO) which Facebook then directed to its “fact-checkers” — Science Feedback, a French entity, and Poynter — to review. The AI machine learning models developed to detect misinformation signals are owned and were originally trained by Facebook’s selection of inputs. Machine learning models rely upon training and need to be trained upon a set of inputs, which Facebook itself selects. Thus, the validation and deployment of the machine learning models by which vaccine “misinformation” is directed to “fact-checkers” is wholly controlled by Facebook.

89. Second, Facebook’s Trust and Safety Division provided these “fact-checkers” with training manuals and other materials with which to review CHD’s posts, and Facebook’s set of prepopulated screening options. Facebook’s materials evidently referenced “authoritative” CDC/WHO sources for the “fact-checkers” to cite. Facebook helps develop and create the “fact-checkers” content. (We cannot know at this time whether Facebook also translates Science Feedback’s posts from French into English. Facebook posted Correctiv’s untranslated German fact-check over a CHD post.)

90. Third, Facebook evidently directed its Science Feedback and Poynter “fact-checkers” to bypass the “opinion” prepopulated screening option because that option does not result in a “fact-check” overlay. (As discussed *infra*, at least some of the CHD posts at issue should have been classified as “Opinion” based on fully-disclosed facts.) As has been documented elsewhere, Facebook can and does pressure its “fact-checkers” to change ratings. “In some cases, Facebook has reevaluated fact-check labels or penalties after fact-checkers had acted, often in the wake of political, financial, and PR pressures.” Alex Pasternack, *Facebook is quietly pressuring its independent fact-checkers to change their rulings*, FAST COMPANY (Aug. 20, 2020), <https://www.fastcompany.com/90538655/facebook-is-quietly-pressuring-its-independent-fact-checkers-to-change-their-rulings> (last visited Nov. 12, 2020).

91. Fourth, Facebook provides a substantial portion of the “fact-checkers” operating budgets which is at least 5% (the actual amount is not disclosed), and gives the “fact-checkers” more compensation on a post-by-post basis when the “fact-checkers” label posts “false” or

1 “partly false,” with resulting opposition content-development, than when posts are labeled
2 protected “opinion” instead.

3 92. Fifth, Facebook retains final control over the “fact-checker”- developed content.
4 The technology that displays fact-checking posts on CHD pages is owned by Facebook.
5 Control over the CHD page graphical elements (the grey overlay which obscures CHD’s
6 content and labels it “false information checked by independent fact-checkers”) is exercised by
7 Facebook, not its “fact-checkers.” The technology to limit visibility as a result of “fact-
8 checking” rating is controlled by Facebook. *Facebook's Enforcement of Fact-Checker Ratings*,
9 FACEBOOK FOR BUSINESS, Business Help Center,
10 https://www.facebook.com/business/help/297022994952764?id=673052479947730&recommended_by=2593586717571940 (last visited Nov. 12, 2020). Facebook decides whether to
11 publish “fact-checker” posts in whole or in part, and — crucially — Facebook posts them to
12 CHD’s page, not to the “fact-checkers” pages. Context is everything. Facebook’s posting of
13 its “fact-checker” content directly to CHD’s page wrongly presumes that CHD has no
14 beneficial right or interest in its page, or in being free of Facebook’s deliberate falsehoods as a
15 condition of doing business on Facebook. *See, e.g., Fair Hous. Council v. Roommates.com,*
16 *LLC*, 521 F.3d at 1166 (CDA Section 230 immunity did not protect website which made
17 answering discriminatory questions, which violated the Fair Housing Act, a “condition of
18 doing business” on the site). Facebook is also responsible for the technology that handles
19 consequences of fact-checking rating, including reduced distribution, share warning pop-ups,
20 sharing notifications, misinformation labels, and reducing the distribution of CHD’s other
21 posts, and demonetizing CHD’s page.

23 93. In these, and other nonobvious ways, Facebook and Zuckerberg have established
24 an elaborate and intricate agency relationship with Science Feedback and Poynter, their
25 designated vaccine “misinformation” “fact-checkers.” Facebook the corporation and
26 Zuckerberg the individual are both “responsible, in whole or in part, for the creation or
27 development of information” under 47 U.S.C. § 230(f)(3) which information Facebook falsely
28 purports to have been “independently” created and developed in whole by its nominally-third-

1 party “fact-checkers.”

2 94. Moreover, the web of other interrelationships between these defendants and
 3 various other entities, named and unnamed as parties herein, demonstrate the lack of
 4 independence between these organizations and the bias of these organizations against vaccine
 5 safety advocates such as CHD. For example, the Silicon Valley Community Foundation
 6 (“SVCF”) is another of Poynter’s major funders (besides Facebook). *Largest funders of*
 7 *Poynter, supra*, POYNTER.ORG, <https://www.poynter.org/major-funders/>. SVCF granted over
 8 \$256,000 to Poynter in 2018. *Grants: Where the Giving Goes*, SILICON VALLEY COMMUNITY
 9 FOUNDATION, Community Impact, <https://www.siliconvalleycf.org/2015grantees> (last visited
 10 Nov. 12, 2020). Zuckerberg has donated substantial funds to SVCF: \$500 million in 2012, \$1
 11 billion in 2013, and \$214 million in 2018, all in Facebook stock. *Facebook Founder*
 12 *Announces \$500 Million to Silicon Valley Community Foundation*, PND (Dec. 20, 2012),
 13 [https://philanthropynewsdigest.org/news/facebook-founder-announces-500-million-to-silicon-](https://philanthropynewsdigest.org/news/facebook-founder-announces-500-million-to-silicon-valley-community-foundation)
 14 [valley-community-foundation](https://philanthropynewsdigest.org/news/facebook-founder-announces-500-million-to-silicon-valley-community-foundation); Brandon Baily, *Facebook’s Mark Zuckerberg makes \$1 billion*
 15 *donation*, THE MERCURY NEWS (Dec. 19, 2013),
 16 [https://www.mercurynews.com/2013/12/19/facebooks-mark-zuckerberg-makes-1-billion-](https://www.mercurynews.com/2013/12/19/facebooks-mark-zuckerberg-makes-1-billion-donation/)
 17 [donation/](https://www.mercurynews.com/2013/12/19/facebooks-mark-zuckerberg-makes-1-billion-donation/); Kathleen Chaykowski, *Zuckerberg Donates \$200 Million To Silicon Valley*
 18 *Community Foundation As It Hires New CEO*, FORBES (Nov. 10, 2018),
 19 [https://www.forbes.com/sites/kathleenchaykowski/2018/11/10/zuckerberg-donates-214-](https://www.forbes.com/sites/kathleenchaykowski/2018/11/10/zuckerberg-donates-214-million-to-silicon-valley-community-foundation-as-it-hires-new-ceo/?sh=1897d9b4550d)
 20 [million-to-silicon-valley-community-foundation-as-it-hires-new-ceo/?sh=1897d9b4550d](https://www.forbes.com/sites/kathleenchaykowski/2018/11/10/zuckerberg-donates-214-million-to-silicon-valley-community-foundation-as-it-hires-new-ceo/?sh=1897d9b4550d).

21 95. More recently, both Facebook and CZI donated to SVCF (particularly to its
 22 Coronavirus Response). *Coronavirus Response Donors*, SILICON VALLEY COMMUNITY
 23 FOUNDATION, SVCF Coronavirus Response, [https://www.siliconvalleycf.org/coronavirus-](https://www.siliconvalleycf.org/coronavirus-response-donors)
 24 [response-donors](https://www.siliconvalleycf.org/coronavirus-response-donors) (last visited Nov. 12, 2020). Recently, 25% of SVCF’s grants has fallen into
 25 the “health” category. *Fundraising In A Pandemic: Where To Pivot And Persist*, CCS
 26 FUNDRAISING, <https://sftp.polsinelli.com/webinar/Fundraising-Webinar-6.10.20.pdf>. Despite
 27 its name, which suggests local Silicon Valley focus, SVCF is a leading international granting
 28 foundation and makes grants worldwide. For example, in 2019 SVCF granted \$200,000 to the

Walter and Eliza Hall Institute of Medical Research in Australia, which, among other things, works in vaccine development. *Vaccine development*, WEHI (The Walter and Eliza Hall Institute of Medical Research), <https://www.wehi.edu.au/research/research-technologies/vaccine-development> (last visited Nov. 12, 2020); *Grants: Where the Giving Goes*, SILICON VALLEY COMMUNITY FOUNDATION, Community Impact, <https://www.siliconvalleycf.org/grantees>. Grantees in the United States include Children's Hospital of Philadelphia, PATH, and the Chan Zuckerberg BioHub, Inc. for which the following 2019 transactions were noted:

Chan Zuckerberg Biohub, Inc.	CA	Health	Donor Advised	2019	2,498,721
Chan Zuckerberg Biohub, Inc.	CA	Health	Donor Advised	2019	-55,000,000

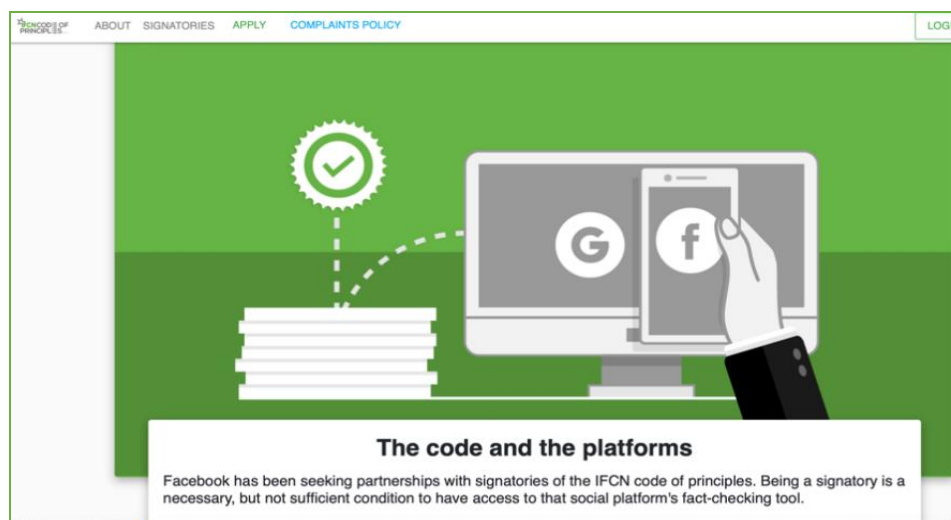
96.

97. The Chan Zuckerberg Initiative also makes grants through entities including the Chan Zuckerberg Initiative Donor-Advised Fund (DAF) at the SVCF. *Grants*, CHAN ZUCKERBERG INITIATIVE, <https://chanzuckerberg.com/grants-ventures/grants/> (last visited Nov. 12, 2020).

98. Poynter founded the International Fact-Checking Network (“IFCN”) in 2015. IFCN is a unit of Poynter the purpose of which is to bring together “fact-checkers” on an international level and, in its own words, to “help[] surface common positions among the world’s fact-checkers.” *The International Fact-Checking Network*, POYNTER.ORG, <https://www.poynter.org/ifcn/> (last visited Nov. 12, 2020).

99. All Facebook “fact-checking” partners must be “certified” through IFCN. *Partnering with Third-Party Fact-Checkers*, FACEBOOK, Journalism Project (Mar. 23, 2020), <https://www.facebook.com/journalismproject/programs/third-party-fact-checking/selecting-partners>.

100. IFCN’s own website features its relationship with Facebook:



101.

The code and the platforms, POYNTER.ORG, <https://ifncodeofprinciples.poynter.org/know-more/the-code-and-the-platforms> (last visited Nov. 12, 2020).

102. The IFCN certification of Poynter's own branded unit "PolitiFact" expired on June 20, 2020. Further, as shown by IFCN's website, PolitiFact scored low in a number of categories assessed in the certification process, including transparency of sources, nonpartisanship and fairness, and transparency of methodology. *PolitiFact*, POYNTER.ORG, IFCN Code of Principles, <https://ifncodeofprinciples.poynter.org/profile/politifact> (last visited Nov. 12, 2020).

103. Defendant Science Feedback also is certified by and a signatory to Poynter's IFCN. *Science Feedback*, POYNTER.ORG, IFCN Code of Principles, <https://ifncodeofprinciples.poynter.org/profile/science-feedback> (last visited Nov. 12, 2020). Though a French entity, Science Feedback delivers its work-product to Facebook's offices and committed other acts in furtherance of the defendants' fraudulent scheme in this District.

104. Science Feedback describes itself as "the only organization dedicated to verifying information in scientific fields by empowering the scientific community to take an active part in this endeavour to make the Internet a more credible place." *Science Feedback partnering with Facebook in fight against misinformation*, SCIENCE FEEDBACK (May 14, 2019), <https://sciencefeedback.co/science-feedback-partnering-with-facebook-in-fight-against-misinformation/> (last visited Nov. 12, 2020).

1 105. Science Feedback has partnered with Facebook since at least April 2019 to fact
2 check Facebook content. *Id.*, *Science Feedback partnering with Facebook in fight against*
3 *misinformation, supra*, SCIENCE FEEDBACK, [https://sciencefeedback.co/science-feedback-](https://sciencefeedback.co/science-feedback-partnering-with-facebook-in-fight-against-misinformation/)
4 [partnering-with-facebook-in-fight-against-misinformation/](https://sciencefeedback.co/science-feedback-partnering-with-facebook-in-fight-against-misinformation/).

5 106. Health Feedback contributors include numerous pro-vaccine scientists and
6 vaccine patent holders, including Ian Frazer, Neal Halsey, Walter A. Orenstein, and Beate
7 Kampmann, among others. *Reviewers*, HEALTH FEEDBACK, Community,
8 <https://healthfeedback.org/community/> (last accessed Nov. 12, 2020). This list of contributors
9 demonstrates that Science Feedback’s and Health Feedback’s “commitment to objectivity” is a
10 veneer.

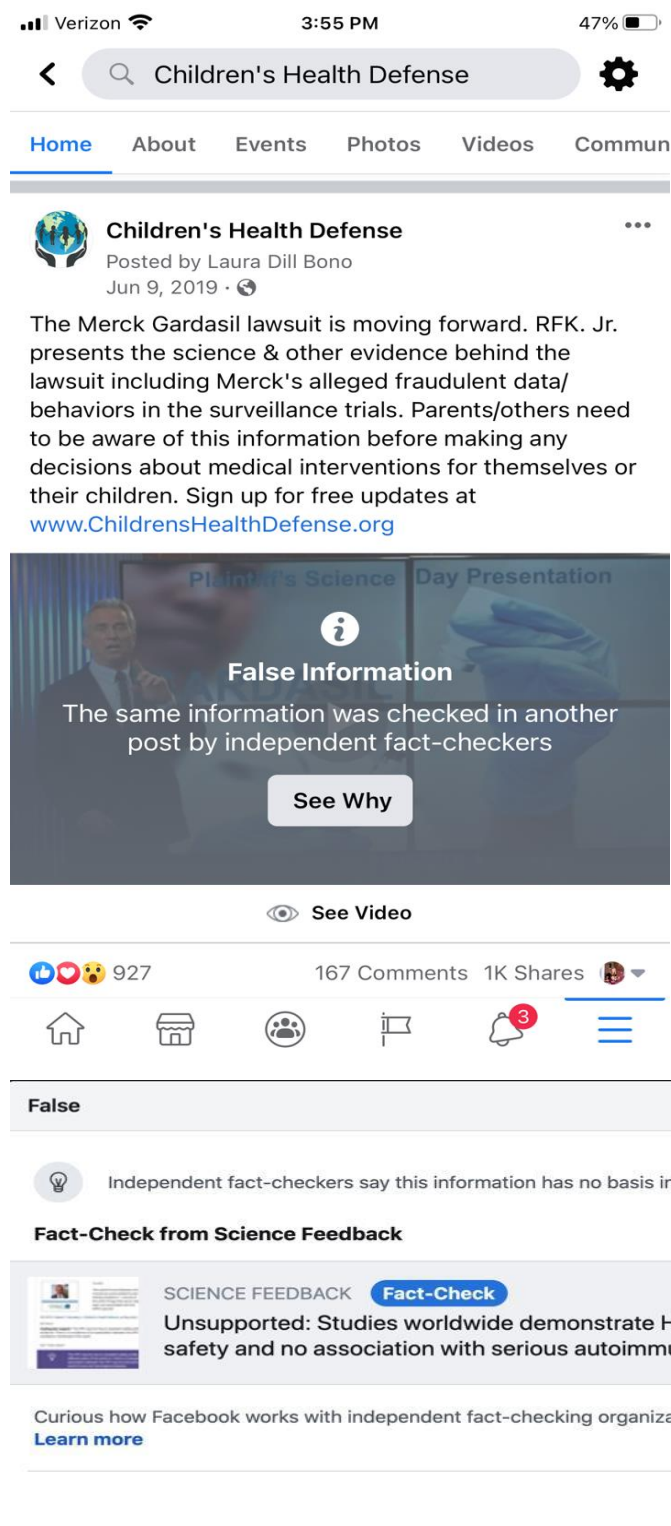
11 107. Science Feedback is the parent company of Health Feedback, which is a member
12 of WHO’s Vaccine Safety Net. *About*, SCIENCE FEEDBACK, <https://sciencefeedback.co/about/>
13 (last visited Nov. 12, 2020); *Health Feedback*, VACCINE SAFETY NET (updated Jan. 31, 2020),
14 <https://www.vaccinesafetynet.org/vsn/network/health-feedback> (last visited Nov. 12, 2020).
15 Vaccine Safety Net vigorously opposes challenges raised by vaccine safety advocates and
16 others. *About Vaccine Safety Net*, VACCINE SAFETY NET,
17 <https://www.vaccinesafetynet.org/vsn/vaccine-safety-net> (last visited Nov. 12, 2020).

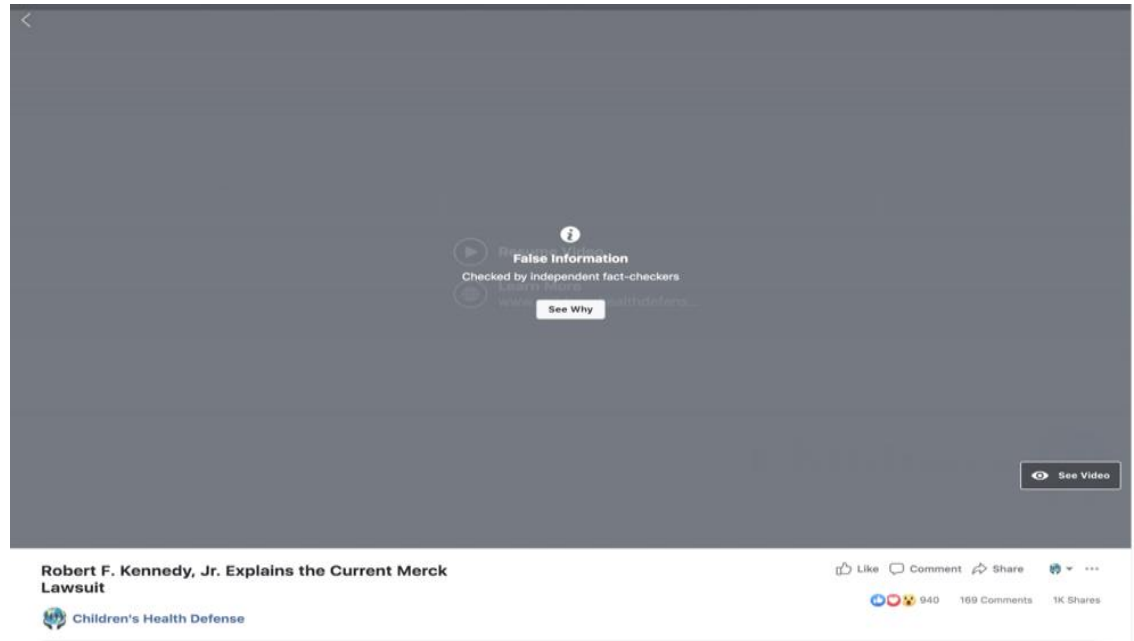
18 108. The WHO’s Vaccine Safety Net membership includes the American Academy of
19 Pediatrics, the CDC, GAVI, Global Advisory Committee on Vaccine Safety (“GACVS”),
20 PATH’s Vaccine Resource Library, Vaccinate Your Family, the Vaccine Education Center at
21 the Children’s Hospital of Philadelphia, the Immunization Action Coalition, the Sabin Vaccine
22 Institute, and the Vaccine Knowledge Project. *VSN Members*, VACCINE SAFETY NET,
23 <https://www.vaccinesafetynet.org/vsn/network> (last visited Nov. 12, 2020).

24 **b. Specific Facebook “Fact-Checks” Containing Material Falsity.**

25 109. On or about June 9, 2019 and thereafter, Facebook electronically blocked CHD
26 from displaying on CHD’s Facebook page a videotape interview of RFK, Jr. discussing a
27 pending lawsuit against Merck & Co. In so doing, Facebook fraudulently misrepresented to all
28

third-party users of CHD's Facebook page that the videotape was "False Information Checked by independent fact-checkers."





112.

113. Facebook’s warning label on RFK’s May 15, 2019 videotape critical of Merck, Inc. was materially deceptive, in that the videotape is accurate with respect to its assertions of fact and is otherwise an expression of RFK, Jr.’s opinions, and not “False Information” as Facebook claims. Facebook’s warning label also omits material facts by failing to disclose its advertising-client relationship with Merck, Inc. *See* T. Staton, *The top 10 pharma companies in social media*, FIERCEPHARMA, <https://www.fiercepharma.com/special-report/top-10-pharma-companies-social-media-0> (last visited Aug. 14, 2020). Merck, Inc. is one of the top 10 social media spenders among pharmaceutical companies and heavily leverages Facebook as an advertising platform.

114. Science Feedback’s “fact-check” is deliberately false and misleading, and tries to silence an important discussion about the influence of pharmaceutical companies on vaccine trial data and outcomes. Science Feedback does not address the crux of the piece – RFK, Jr.’s criticism about fraud at Merck, and how trial data was manipulated. Merck has a well-documented history of fraudulent behavior. It intentionally withheld scientific data about Vioxx’s adverse cardiovascular side effects resulting in settlements and fines above \$4.8 billion for causing at least 60,000 deaths from sudden heart attacks and over 120,000 serious medical injuries. Defendants were aware, or acted in reckless disregard of, these and other

1 specific falsities in the Science Feedback opposition “fact-check,” but posted it nonetheless on
2 CHD’s page, in furtherance of their fraudulent scheme.

3 115. In citing studies that the HPV vaccine has been proven safe and effective,
4 Science Feedback deliberately omits studies that have had a different outcome, and attempts to
5 deflect scrutiny of the pharmaceutical companies, and their manipulation of study outcomes.
6 Richard Horton, the Editor in Chief of the esteemed medical journal “Lancet” was recently
7 quoted as saying the influence wielded by big Pharma to influence publications is “criminal.”

8 116. On or about May 1, 2019 and thereafter, Facebook electronically blocked CHD
9 from displaying photographs of children receiving vaccines with needles on CHD’s Facebook
10 page, and fraudulently misrepresented to CHD that the photographs were “violent,” and
11 purported to have deleted them on that basis. Facebook’s stated reason was a pretext for its
12 actual motive: to inflict damage on CHD.

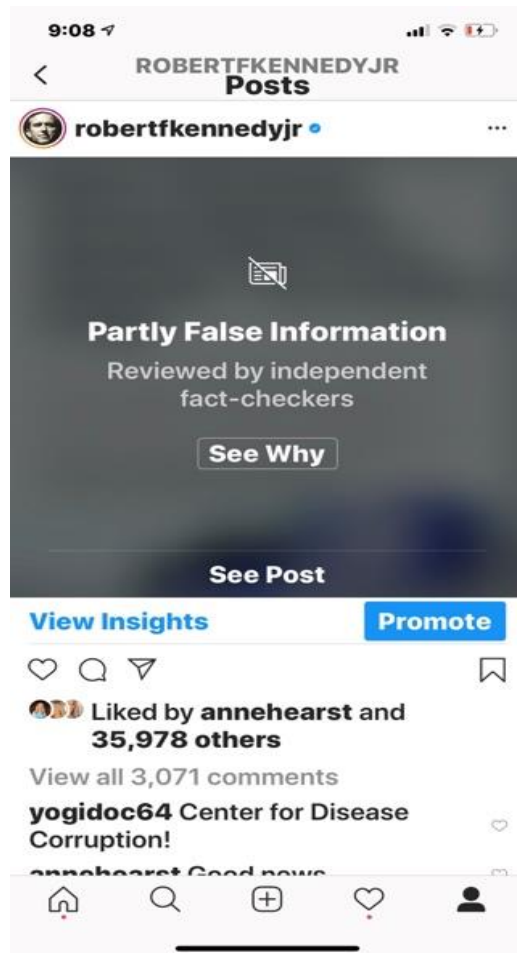
13 117. On about May 1, 2019 and thereafter, Facebook posted the text of Wikipedia’s
14 entry about CHD on CHD’s Facebook page and refused to take it down, despite CHD’s
15 objection that the Wikipedia entry is false and misleading. The Wikipedia entry states, *inter*
16 *alia*, that “[m]uch of the material put forth by the Organization involves manipulation of
17 information and anti-vaccine propaganda. [. . .] The group has been contributing to vaccine
18 hesitancy in the United States[.]” Defendants were aware, or acted in reckless disregard of,
19 these and other specific falsities in the Science Feedback opposition “fact-check,” but posted it
20 on CHD’s page nonetheless, in furtherance of their fraudulent scheme.

21 118. Wikipedia’s reliability has been questioned by organizations such as the Hoover
22 Institute, Encyclopedia Britannica and MIT. In *Wikipedia: The Dumbing Down of World*
23 *Knowledge* (2010), journalist Edwin Black characterized the content of articles as a mixture of
24 “truth, half-truth, and some falsehoods.” Edwin Black, *Wikipedia—The Dumbing Down of*
25 *World Knowledge*, HISTORY NEWS NETWORK (April 19, 2010). Archived from the original on
26 September 9, 2016.) In *Wisdom? More like Dumbness of the Crowds* (2007), Oliver Kamm
27 wrote that articles usually are dominated by the loudest and most persistent editorial voices or
28 by an interest group with an ideological “axe to grind”. Oliver Kamm, *Wisdom? More like*

1 *dumbness of the crowds*, THE TIMES (August 16, 2007). The Wikipedia post smears CHD by
 2 asserting that “the organization involves misinformation on vaccines and anti-vaccine
 3 propaganda.” If Facebook were truly concerned with reliable information, it would not use
 4 Wikipedia as a weapon against CHD on CHD’s own page.

5 119. On or about May 26, 2020 and thereafter, Facebook and its Lead Stories “fact-
 6 checker” blocked CHD from displaying a 45-minute Instagram videochat with RFK, Jr. in
 7 which he accurately detailed Dr. Anthony Fauci’s past involvement with vaccine
 8 manufacturers, and Facebook fraudulently misrepresented to all third-party users that the
 9 interview was “Partly False Information Reviewed by independent fact-checkers.” Instagram is
 10 a Facebook-subsidary photo and video-sharing social networking service.

11 120.



**Independent Fact-Checkers
Say This Is Partly False**

The information in this post is a mix of true and false claims or it could be misleading or incomplete.



Fact-Checker: Lead Stories

Conclusion: Partly False

More Information: Partly False:

There is a reporting lag on death-certificate based statistics compared to direct reports from states etc.

You can **send them an email** if you think there was a mistake.

Learn more about how Instagram is working with independent fact-checkers to reduce false information.

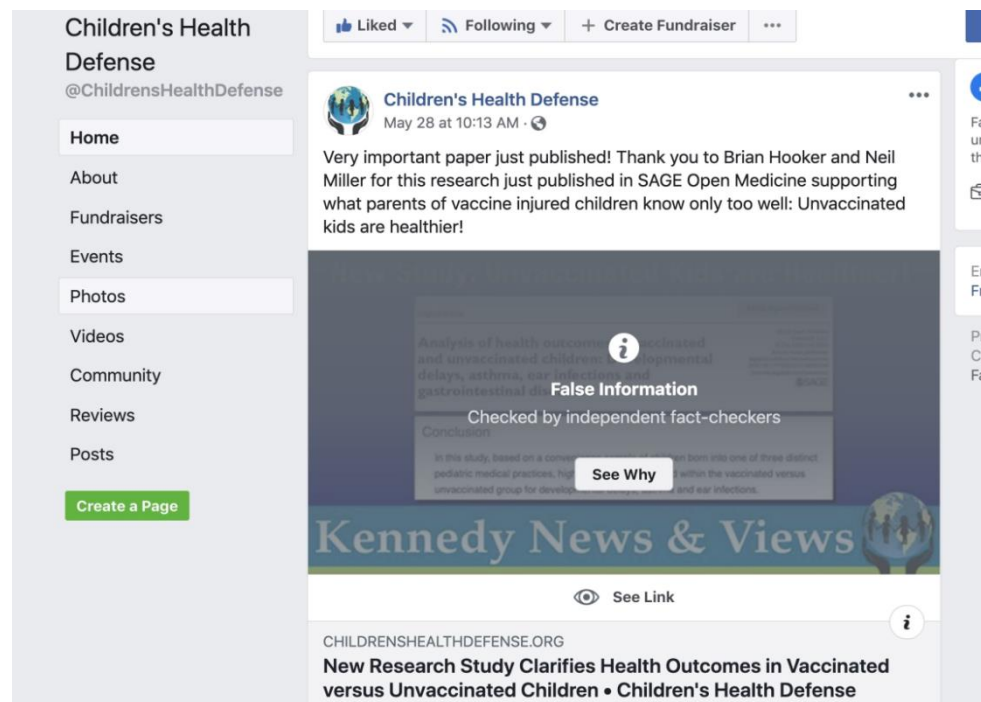
121.

122. Upon clicking the “See Why” button, this materially-misleading explanation appears: “Independent Fact-Checkers Say This Is Partly False. The information in this post is a mix of true and false claims or it could be misleading or incomplete.” This “partly false” designation appears to concede that the information is at least partly true, while the warning taints the entirety of the material – a highly unfair, overbroad and prejudicial approach. In actuality, RFK Jr.’s interview consisted of completely factual representations and statements of opinion derived from disclosed facts. Defendants were aware, or acted in reckless disregard of, these and other specific falsities in the Lead Stories opposition “fact-check,” but posted it on CHD’s page nonetheless, in furtherance of their fraudulent scheme.

123. On or about May 28, 2020 and thereafter, Facebook blocked CHD from displaying an article by Dr. Brian Hooker and Neil Miller concerning health outcomes in a small-sample study of vaccinated and unvaccinated children and fraudulently misrepresented to all third-party users that the article was “False Information Checked by Independent fact-checkers.”

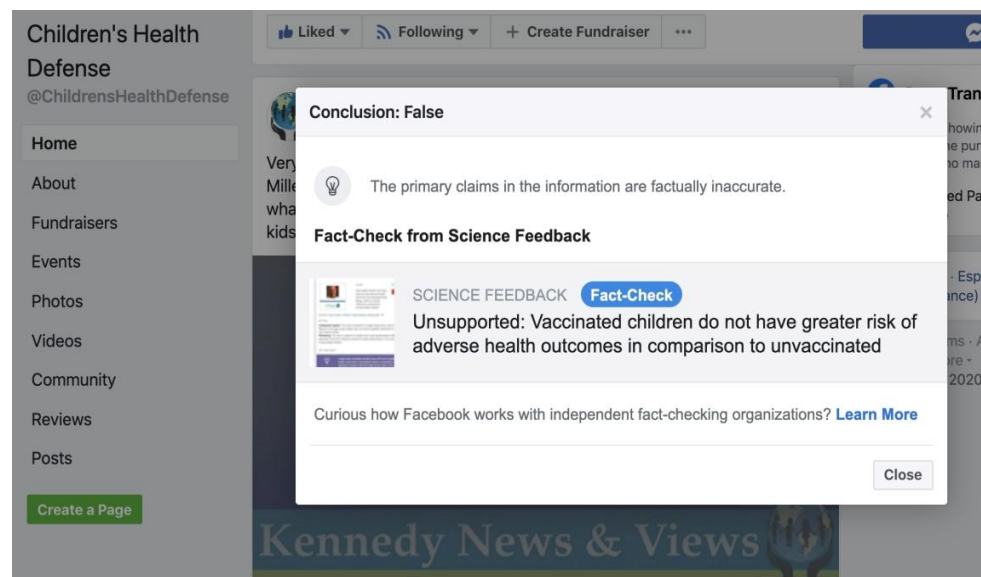
124. Instead of sharing a normal preview, Facebook marks the content specifically with an overlay grey graphic and prominent warning: “False Information Checked by Independent fact-checkers.” This has the intended effect of reducing both click-throughs to the underlying content and shares. The net effect is to drastically reduce by 95% the traffic to

Children's Health Defense website. *Entire CNN April 16 Coronavirus Town Hall* [Video], *supra*, <https://www.cnn.com/videos/business/2020/04/17/entire-april-16-coronavirus-town-hall-part-5-sot-vpx.cnn>.



125.

126. Upon clicking the “See Why” button in the above screenshot, the user is shown the following scroll which gives the notice, “The primary claims in the information are factually inaccurate.”



127.

128. Clicking the Science Feedback preview graphic takes the user to Facebook's purportedly "independent," i.e., objectively-neutral, Science Feedback "fact-check" opposition:

Significant methodological flaws in a 2020 study claiming to show unvaccinated children are healthier

375
SHARES

f Share

Tweet



Children's
Health Defense

CLAIM

Vaccinated children are more likely to have adverse health outcomes like developmental delays, asthma, and ear infections compared to unvaccinated children.

VERDICT[®]

UNSUPPORTED

SOURCE: Brian Hooker, Children's Health Defense, 28 May 2020

DETAILS

Inadequate support: This claim is based on a single study which used highly biased methods. Rigorous and large-scale studies have not found a greater likelihood of adverse health outcomes in vaccinated children.

Misleading: The claim is based on a study which used questionable methods of selecting a study population and which failed to control for confounding factors in its comparison of vaccinated and unvaccinated children.

KEY TAKE AWAY



Large-scale, reputable studies have not found a greater incidence of adverse health outcomes in vaccinated children compared to unvaccinated children. A significant problem with the single study cited in this claim is its failure to control for differences between vaccinated and unvaccinated children, such as healthcare-seeking behavior, which can factor into health outcomes. Furthermore, the study used patient data from handpicked pediatric clinics only, which are not representative of the general population.

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Flora Teoh
Science Editor, Health Feedback

Support our work

We depend on your support to operate.
Help us create a more trustworthy
Internet!

129.

130. However, this purportedly neutral Science Feedback "fact-check" is itself a misrepresentation of material fact. Dr. Hooker, the author of the original study, disclosed in that study the small size of his study sample, the statistical methods he employed on that small sample, and the results he obtained, all of which is fully consistent with the scientific method. Any reasonable reader of the study would be fully empowered to interpret for himself or herself whether those statistical results have broader applicability, particularly in light of the author's conclusion that broader studies are warranted. Instead, Facebook holds out its "fact-checker's" opinion critical of the study methodology as conclusive "fact." Facebook's classification of the original study as factually "false" is deceptive and materially misleading.

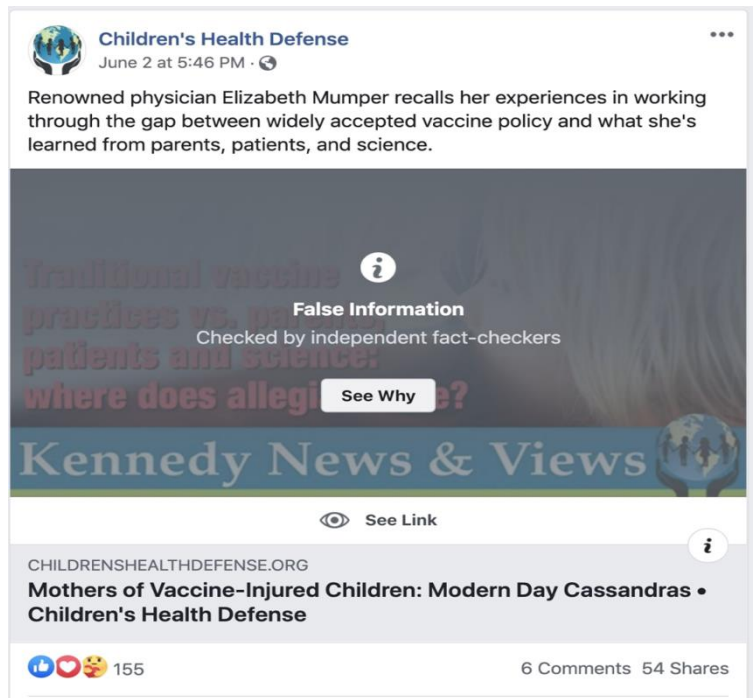
1 131. Looking beyond the veneer of the “fact-checker” label, one sees a patent effort to
2 deceive rather than to educate the reader. Science feedback’s primary criticism of the Hooker
3 and Miller 2020 study was the use of a convenience sample which refers to a cohort of 2,047
4 children, whose data the authors studied from three separate pediatric practices in the United
5 States. However, convenience samples are used routinely in epidemiology, and also form the
6 basis for the FDA’s approval of drugs and biologics.

7 132. For example, Science Feedback relies upon as its source, Dr. David Gorski, a
8 blogger who states, “Basically, no matter how you analyze a convenience sample, you can’t
9 generalize it to the larger population.” This is false and misleading. The CDC’s own studies,
10 some of which are cited in the “fact-checking” article, are almost exclusively based on
11 convenience samples. The study presented by Destefano et al. in the 2004 journal *Pediatrics* on
12 the timing of the MMR vaccine and autism was completed using a convenience sample of
13 approximately 2,400 children in public school districts in Metropolitan Atlanta. This was not a
14 representative sample of the U.S. population as the percentage of African American children in
15 the study was 35.4% compared to that of the U.S. at the time at 16%. Yet, this sole study is the
16 CDC’s basis for denying a causal link between the MMR vaccine and autism in the U.S.
17 Defendants were aware, or acted in reckless disregard of, these and other specific falsities in
18 the Science Feedback opposition “fact-check,” but posted it on CHD’s page nonetheless, in
19 furtherance of their fraudulent scheme.

20 133. On June 2, 2020 and thereafter, Facebook and Science Feedback, its purportedly
21 “independent fact-checker,” blocked CHD from displaying Dr. Elizabeth Mumper’s personal
22 account of her medical practice experience evaluating children and families over many
23 decades, and fraudulently misrepresented to all third-party users that the post was “False
24 Information Checked by independent fact-checkers.”

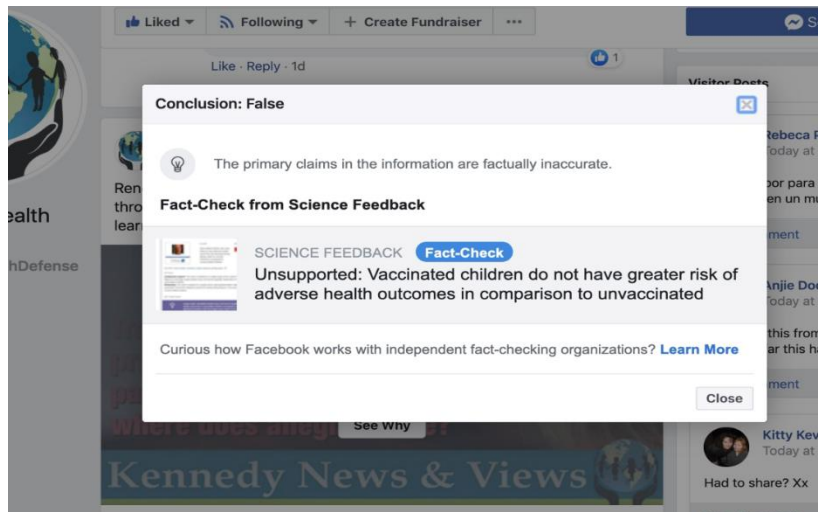
25 134. Instead of sharing a normal preview, Facebook marks the content specifically
26 with an overlay grey graphic and a prominent warning “False Information Checked by
27 independent fact checkers.” As discussed, *supra*, this has the intended effect of drastically
28

reducing (by 95%) both click-throughs to the underlying content and shares. Facebook deploys this deceptive tactic in order to greatly reduce user traffic to CHD’s Facebook page or website.



135.

136. Upon clicking the “See Why” button in the above screenshot, the user is shown the following scroll with the notice, “The primary claims in the information are factually inaccurate.” But, the only citation for this notice is Dr. Brian Hooker’s small scale study referenced *supra*. Dr. Hooker’s study is cited by the article, but it is neither its “primary” claim nor, in any event, is it false.




137.

138. Clicking the Science Feedback preview graphic takes the user to a purported “fact-check” and oppositional article to Dr. Hooker’s study, not Dr. Mumper’s study, which it labels “false.”

Significant methodological flaws in a 2020 study claiming to show unvaccinated children are healthier

375 SHARES Share Tweet



CLAIM

Vaccinated children are more likely to have adverse health outcomes like developmental delays, asthma, and ear infections compared to unvaccinated children.

VERDICT

UNSUPPORTED

SOURCE: Brian Hooker, Children's Health Defense, 28 May 2020

DETAILS

Inadequate support: This claim is based on a single study which used highly biased methods. Rigorous and large-scale studies have not found a greater likelihood of adverse health outcomes in vaccinated children.

Misleading: The claim is based on a study which used questionable methods of selecting a study population and which failed to control for confounding factors in its comparison of vaccinated and unvaccinated children.

KEY TAKE AWAY

Large-scale, reputable studies have not found a greater incidence of adverse health outcomes in vaccinated children compared to unvaccinated children. A significant problem with the single study cited in this claim is its failure to control for differences between vaccinated and unvaccinated children, such as healthcare-seeking behavior, which can factor into health outcomes. Furthermore, the study used patient data from handpicked pediatric clinics only, which are not representative of the general population.

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Internet!

139.

140. Rather, Dr. Mumper’s article, *Mothers of Vaccine Injured Children: Modern Day Cassandras*, details its author’s medical practice history evaluating children and families and the systematic denial of the existence of vaccine injury by the public health system. The article contains links to peer reviewed, published research, and makes clear that it is Dr. Mumper’s small-scale analysis and opinion, and that the interpretive value of her fact-based opinions should be viewed accordingly, that is, as an anecdotal but nonetheless significant marker of disparities in health outcomes. That fully-disclosed caveat does not make Dr. Mumper’s article any less relevant as a contribution to the scientific literature. Critically, Dr. Mumper’s article is not factually inaccurate or misleading in any way, nor does Facebook or Science Feedback identify any actual inaccuracies.

141. Dr. Mumper is a board-certified pediatrician with 40 years of experience as a clinical practitioner and pediatric faculty member. She served as Medical Director of the Autism Research Institute for five years and has lectured about medical problems of children

1 with chronic disease in 20 countries. The clinical opinion Dr. Mumper expressed in her June 2,
 2 2020 article was the product of her extensive clinical research and practice, and her
 3 conscientious reading of the medical literature. She has personally asked the CDC, National
 4 Institute of Health, and the American Academy of Pediatrics to conduct well-controlled studies
 5 comparing vaccinated children to unvaccinated children. In the meantime, and in the absence
 6 of any such more definitive work, Dr. Mumper's small-scale comparative study and her
 7 opinions, within their expressed limits, have interpretive value and validity, and play a
 8 necessary and critical role in informing her fellow practitioners, patients, and the general
 9 public.

10 142. In short, Facebook has misrepresented as fact to all third-party users that Dr.
 11 Mumper's article is "false," and that its "primary claims are factually inaccurate," when that is
 12 not the truth. Facebook has also misrepresented as fact to all third-party users that Facebook
 13 relied upon an "independent fact-checker," when the criteria that Science Feedback has
 14 actually applied is neither neutral, reliable, nor up-to-date, nor for that matter is Science
 15 Feedback "independent" of its contractual payor, Facebook.

16 143. The CHD content in question illuminates the plausibility of risk in current public
 17 health policy, and this information allows third-party users to determine if additional
 18 investigation or mitigation is needed on their part. Facebook's deliberate conflation of open
 19 scientific controversy with "vaccine hoax" is a misrepresentation of fact. In short, closing
 20 down legitimate debate of matters in open controversy is not a public benefaction, but an abuse
 21 of power and something that is completely contrary to science. Defendants were aware, or
 22 acted in reckless disregard, of these and other specific falsities in the Science Feedback
 23 opposition "fact-check," but posted it on CHD's page nonetheless, in furtherance of their
 24 fraudulent scheme.



JUNE 02, 2020

Mothers of Vaccine-Injured Children: Modern Day Cassandras



Print

By Elizabeth Mumper, M.D., FAAP, The Rimland Center

Some days I feel like Cassandra, the Greek woman who could see the future, but not articulate it in a way that gave her credibility. In the tragedy *Agamemnon*, Apollo promised Cassandra the gift of prophecy if she would be his lover. She accepted the gift, then rebuffed Apollo when he desired sexual favors. Apollo got revenge by ordaining her predictions would be rejected. She predicted the Trojan horse battle and Agamemnon's bloody death, but no one believed her.

Parents of children with complex chronic illness must also feel like Cassandras. Hundreds of times I have taken detailed histories from parents in which seemingly healthy children deteriorated or regressed within 24-48 hours of a vaccine, often ending up in the Emergency Department, only to be told that it was a "coincidence" and that the vaccine could not be the

144.

145. On or about April 16, 2020 and thereafter, Facebook and Poynter/PolitiFact, its purportedly "independent fact-checker," blocked CHD from displaying an article concerning a study in the journal *Collective-Evolution.com* which found a "significantly" greater risk of contracting coronavirus among individuals in the study who received the influenza vaccine, and Facebook and Poynter fraudulently misrepresented to all third-party users that the post was "False Information Checked by independent fact-checkers." Indeed, the very name "PolitiFact" suggests that the putative "fact-checking" here is more political than scientific.



Children's Health Defense

April 16 · 🌐

The Facts: A new study published in the journal Vaccine found a significantly greater risk of contracting coronavirus among individuals in the study who received the influenza vaccine. Reflect On: Are vaccines completely and 100 percent safe for everybody? Is there a large minority who are more susceptible to vaccine injury and complications compared to others?



COLLECTIVE-EVOLUTION.COM

New Study: The Flu Vaccine Is "Significantly Associated" With An Increased Risk of Coronavirus

👍👎👤 654

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PolitiFact

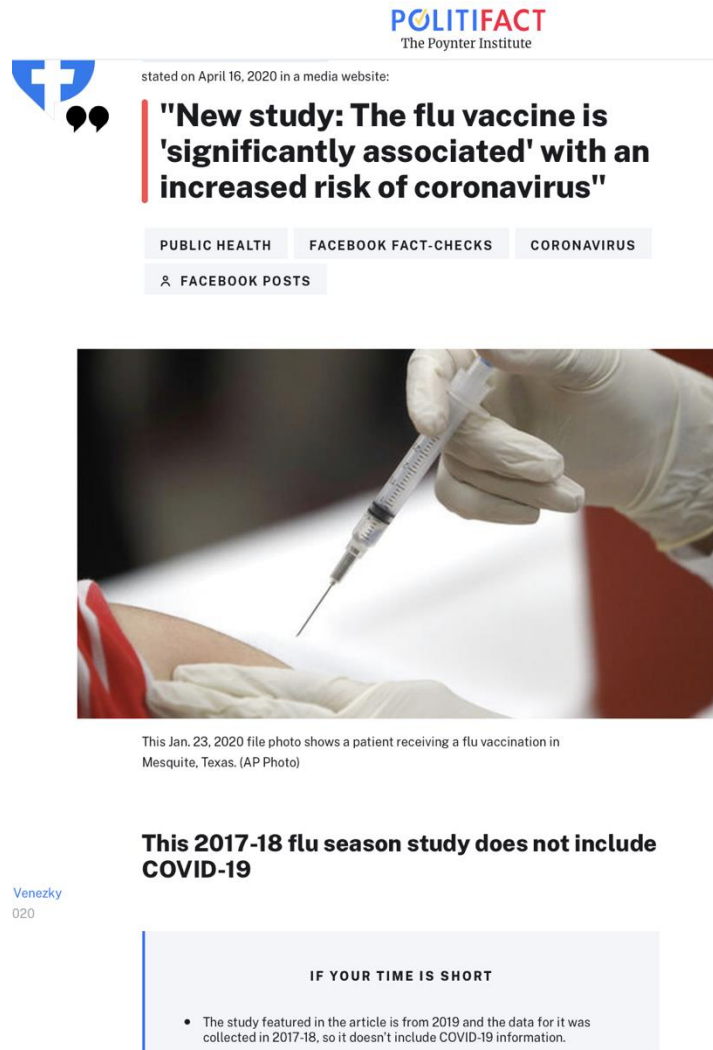
Fact-Check

False Headline: This 2017-18 flu season study does not include COVID-19

PolitiFact is a fact-checking website that rates the acc...

146.

147. Upon clicking-through the “See Why” button, the user is presented with the following purported “fact-check” by PolitiFact, which is a fictitious name registered by Poynter.



148.

149. The Poynter/PolitiFact “fact-check” misrepresents and fails to rebut two important aspects of the study: (1) coronaviruses existed in 2017-2018 in forms other than COVID-19; and (2) the study’s conclusion that “vaccine derived virus interference was significantly associated with coronavirus and human metapneumovirus.” Receiving the influenza vaccination may increase the risk of other respiratory viruses, a phenomenon known as viral interference. Defendants were aware, or acted in reckless disregard, of these and other specific falsities in the Poynter/PolitiFact opposition “fact-check,” but posted it on CHD’s page nonetheless, in furtherance of their fraudulent scheme.

150. On or about June 18, 2020 and thereafter, Facebook blocked CHD from displaying an article concerning a sharp decline in infant death rates during the pandemic,

1 matching a sharp decline in “well-baby visits” when vaccines are typically given. Facebook
 2 and Science Feedback, its purportedly “independent fact-checker,” fraudulently misrepresented
 3 to all third-party users that the post was “Partly False Information Checked by independent
 4 fact-checkers.”



151.

152. Upon clicking-through the “See Why” button, the user is presented with a
 19 purportedly factual opposition article by Science Feedback.



153.


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Infant deaths did not decrease during the pandemic due to a reduced use of vaccines; vaccines are not associated with sudden infant death syndrome


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Method
See how we rate claims

Editor
 Flora Teoh
Science Editor, Health Feedback

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CLAIM

Vaccines are a cause of sudden infant death syndrome; infant deaths decreased dramatically during the lockdown, when the number of vaccines administered was reduced

VERDICT [?](#)
MISLEADING


SOURCE: Amy Becker, Mark Blaxill, Children's Health Defense, Health Choice, 18 Jun. 2020

DETAILS

Lacks context: The claim that child deaths decreased significantly during the pandemic is based on incomplete data. Deaths in the U.S. are reported to the CDC only after death certificates are received by local health authorities, which can take weeks to months. The most recent CDC data therefore always underreport the most recent deaths. The authors of the article did not sufficiently account for this underreporting in their analysis.

Misrepresents a complex reality: The article compares only pediatric vaccine uptake during the pandemic to child deaths and does not consider the many other factors which may have contributed to the recent decline in child deaths, such as lockdowns leading to reduced travel and social contact, culminating in fewer traffic accidents and infectious diseases, respectively.

KEY TAKE AWAY

 Vaccines are safe and scientific studies have found no association between vaccination and sudden infant death syndrome (SIDS). Blaxill and Becker's report is based on incomplete data, as they did not account sufficiently for the lag time that occurs between a death and its reporting to the U.S. CDC. Their findings that child deaths have significantly decreased compared to previous years are therefore spurious and premature. The duo also failed to account for other factors which may have contributed to changes in child mortality, such as stay-at-home orders, which would have limited the spread of other infectious diseases besides COVID-19.

154.

155. Science Feedback's assertion that vaccines bear no "association" with sudden infant death is itself a misrepresentation of fact, as it contradicts, *inter alia*, the potential adverse effect advisements formerly on many vaccine product inserts, customarily administered to infants according to the CDC's 72-dose recommended vaccine schedule. In 2017, the U.S. Court of Federal Claims Special Master ruled there was "preponderant evidence" that vaccines caused or substantially contributed to a 2011 SIDS death. The Special Master also determined that that fatality could not be attributed to non-vaccine related factors. *Boatmon v. Sec'y of Health & Human Servs.*, No. 13-611V, 2017 WL 3432329 (Fed. Cl. Spec. Mstr. July 10, 2017). The U.S. Court of Federal Claims (over one dissent) reversed because the theory was at best "medically plausible," and did not meet petitioner's burden of proof.

Opinion in *Boatmon v. Secretary of Health & Human Services*, No. 18-2333, JUSTIA, U.S. Law (Fed. Cir. 2019), <https://law.justia.com/cases/federal/appellate-courts/cafc/18-2333/18-2333-2019-11-07.html>. Nonetheless, CHD's article advances a potential explanation (expressly stated as such) for a decrease in sudden infant deaths during the pandemic, as to which the public has a right to be informed. There is nothing "false" about CHD's speculative inquiry into matters of causation in an open scientific controversy. Defendants were aware, or acted in reckless disregard, of these and other specific falsities in the Science Feedback opposition "fact-check," but posted it on CHD's page, in furtherance of their fraudulent scheme, nonetheless.

156. On March 4, 2020 CHD posted a link to an article by Dr. Brownstein in Newsmax which examined some of the serious health issues that have surfaced with respect to the HPV vaccines. Facebook darkened the post overlaying the text "False Information Checked by Independent Fact Checkers" with a See Why button. The See Why button led to a screen where Science Feedback asserted the information was false and provided a link to a page for its "fact-checked" article which states that the HPV vaccine has an "excellent safety record."

157. Dr. Brownstein writes that since the HPV vaccine's first approval, there have been reports linking Gardasil (the trade name for the HPV vaccine) to autoimmune illnesses. In order to see if there was an association, scientists used an epidemiological assessment of the vaccine adverse event reporting system database (VAERS) looking for adverse events with Gardasil from 2006 to 2014, and found several increases in auto-immune adverse events. Among several things, the scientists "found a 4.6-fold increase risk of serious autoimmune adverse events outcomes of gastroenteritis, a 7.6- fold increase lupus, 5.6-fold increase in rheumatoid arthritis." The authors of the study concluded, "Confirmatory epidemiological studies in other databases should be undertaken and long-term clinical consequences of HPV-linked [serious autoimmune events] should be examined."

158. Science Feedback does not address two facts which undermine its opinion: (1) auto-immune medical conditions are found in the HPV vaccine warning insert itself (*see Gardasil, Highlights of Prescribing Information*, FDA,

1 [https://www.fda.gov/files/vaccines,%20blood%20&%20biologics/published/Package-Insert---](https://www.fda.gov/files/vaccines,%20blood%20&%20biologics/published/Package-Insert---Gardasil.pdf)
 2 Gardasil.pdf) and (2) the study cited by Dr. Brownstein found that there were increased
 3 autoimmune adverse event findings in data from VAERS which warranted further study.
 4 Instead, Science Feedback labels CHD's post "false fact" based on its own bare bones opinion
 5 that no "association" (a term which Science Feedback doesn't define) between the HPV
 6 vaccine and any of the medical conditions mentioned in this claim has been found.

7 159. Defendants were aware, or acted in reckless disregard, of these and other specific
 8 falsities in the Science Feedback opposition "fact-check," but posted it on CHD's page
 9 nonetheless, in furtherance of their fraudulent scheme.

10 160.



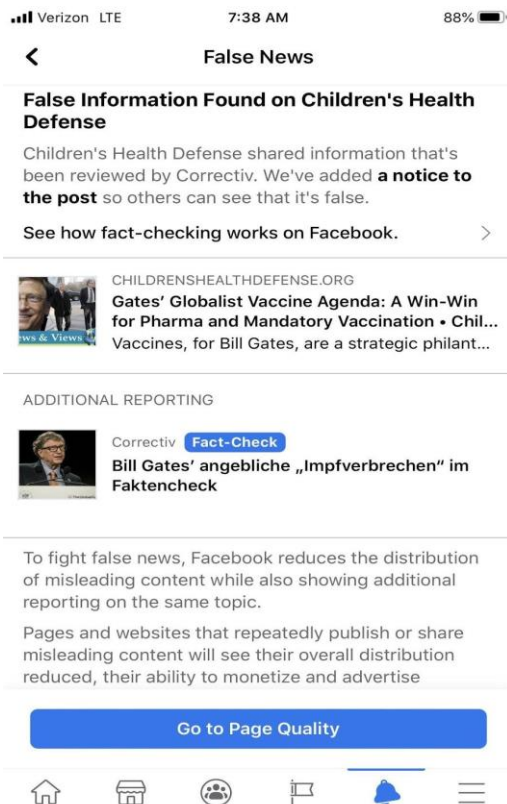
11 161.

12 162. On April 9, 2020, CHD posted an RFK, Jr. editorial entitled *Gates's Globalist*
 13 *Vaccine Agenda, a Win-Win for Pharma and Mandatory Vaccination*, which expressed RFK,
 14 Jr.'s criticisms of Bill Gates' involvement with vaccine development and deployment in the
 15

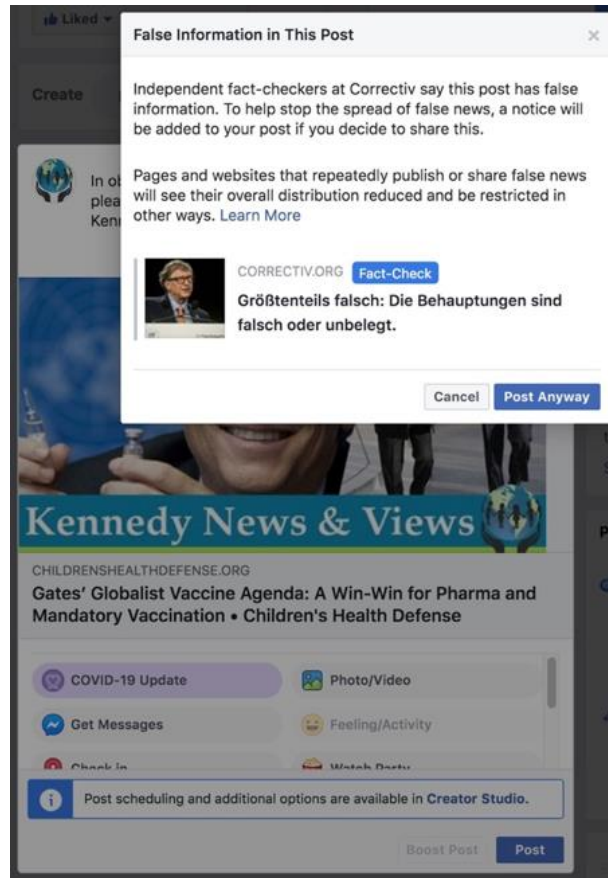
third world. Facebook superimposed a fact-check claiming “False Information” with a link to *Correctiv*, a German fact checking website with a fact-check written in German. On June 13, 2020, CHD attempted to post the editorial again. It received a link to the same German language “fact-check” with a warning that “pages and websites that repeatedly publish false news will see their overall distribution reduced and restricted in other ways.” Out of concern that their Facebook page would be taken down entirely, CHD did not attempt to repost the article.

163. Fact-checking an English language editorial post with a German language post as the basis for threatening punitive actions is arbitrary and capricious. In doing so, Facebook showed that its interest lies in labeling CHD opinion articles as “false fact,” and censoring CHD on that false basis. Defendants were aware, or acted in reckless disregard, of these and other specific falsities in the *Correctiv* German language opposition “fact-check,” but posted it on CHD’s page nonetheless, in furtherance of their fraudulent scheme.

164.



165.

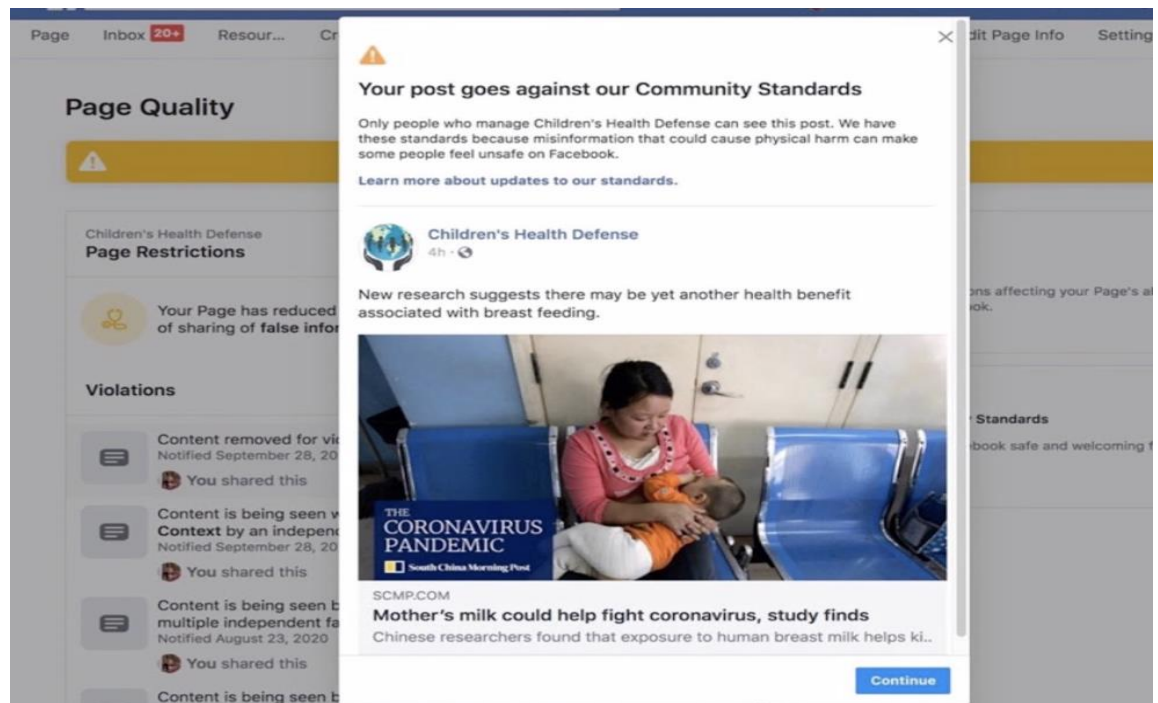


166.

167. On September 28th, 2020, CHD attempted to post a link to an article about breastfeeding and coronavirus, adding the header: *New research suggests there may be yet another health benefit associated with breastfeeding*. Facebook blocked this post and stated that the article went against Community Standards. They wrote, “We have these standards because misinformation that could cause physical harm can make some people feel unsafe on Facebook.”

168. At no point did Facebook identify any misinformation in the article or indicate what harm it threatened to cause. The article discussed research in Beijing on the effect of human breast milk on cells exposed to the Sars-CoV-2 virus in which most living virus strains were killed by the milk. That this article could actually contravene any genuine set of “Community Standards” is difficult to fathom considering that the WHO official stance is that mothers should continue to breastfeed even if they have Covid-19. Given the historical suppression of the health benefits of breastfeeding influenced by financially interested parties

such as the infant formula industry, this censorship is particularly outrageous. Out of concern that their Facebook page would be taken down entirely, CHD did not attempt to repost the article. Defendants were aware, or acted in reckless disregard, of these and other specific falsities in their “Community Standards” notice, but posted it on CHD’s page nonetheless, in furtherance of their fraudulent scheme.

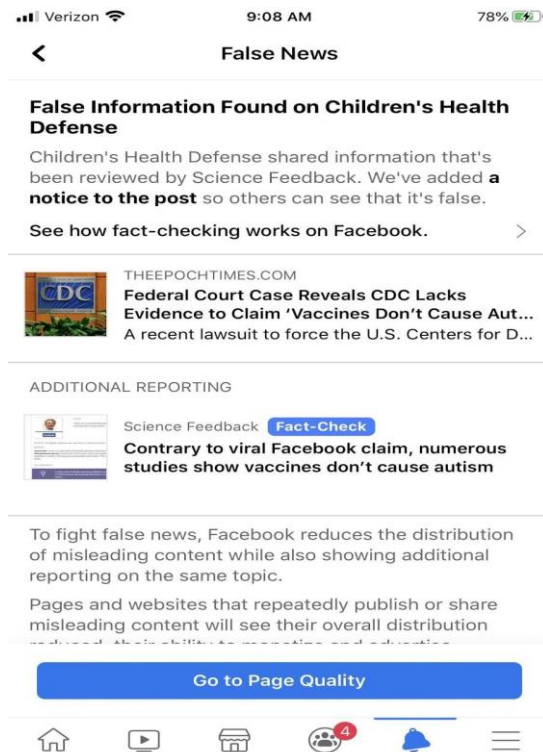


169.

170. On March 3, 2020, CHD posted a link to an article from *The Epoch Times* webpage regarding the results of a federal lawsuit by ICAN. *Stipulated Order Proving CDC Has No Studies To Support Claim That Vaccines Given in First 6 Months of Life Do Not Cause Autism*, ICAN (Mar. 5, 2020), https://www.icandecide.org/ican_lawsuits/stipulated-order-proving-cdc-has-no-studies-to-support-claim-that-vaccines-given-in-first-6-months-of-life-do-not-cause-autism/.)

171. The lawsuit requested that the CDC produce all studies for several specific vaccines on the CDC-schedule which prove that such vaccines do not cause autism. CDC produced 20 studies, but only one of them pertained to the vaccines for which ICAN requested information, and does not even support that conclusion.

172. This discovery was a watershed moment. Yet Science Feedback’s “fact-check” misrepresents the facts by repeating the trope that “numerous studies show that vaccines don’t cause autism” — even though this statement clearly cannot reasonably be considered valid in light of the CDC’s production in the ICAN lawsuit. Indeed, at a minimum, the phrase, “vaccines don’t cause autism,” cannot include all vaccines in the CDC’s 72-childhood vaccine dose schedule (16 separate vaccines), as there are simply no studies to address, much less verify, that claim for the entire schedule. Science Feedback’s “fact-check” is deceptive and misleading. Defendants were aware, or acted in reckless disregard of, these and other specific falsities in the Science Feedback opposition “fact-check,” but posted it on CHD’s page nonetheless, in furtherance of their fraudulent scheme.

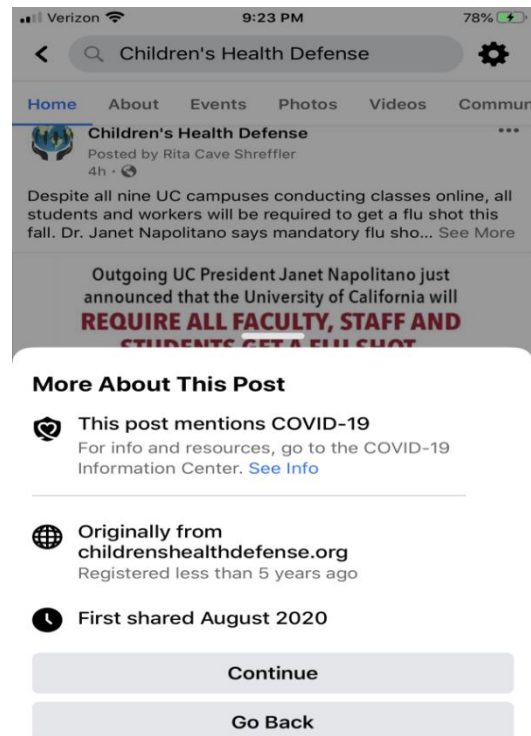


173.

174. On September 2, 2020, CHD posted an article about University of California campuses requiring online students to get a flu shot and CHD’s decision to sue. Facebook darkened the post and superimposed text that stated, “This post mentions COVID-19. For more info and resources, go to the COVID-19 information center,” and included a link to the center.

175. The darkened screen with text overlay creates the impression that the information CHD is posting is not reliable or trustworthy, and intentionally diverts and discourages users from clicking through to read it. Defendants were aware, or acted in reckless disregard of, this specific imputation of falsity in its grey overlay and warning label, but posted it on CHD's page nonetheless, in furtherance of their fraudulent scheme.

176. In actuality, the CHD article cites several studies that show an increase in respiratory infections associated with the flu vaccine. Given the recent mandates around the flu vaccine, making this post less accessible goes against public health. The public has a right to know about these studies. That is especially so since a Cochrane Vaccines Field analysis, which evaluated studies measuring the benefits of flu vaccination and was published in the *BMJ*, concluded: "The large gap between policy and what the data tell us (when rigorously assembled and evaluated) is surprising Reasons for the current gap between policy and evidence are unclear, but given the huge resources involved, a re-evaluation should be urgently undertaken." Tom Jefferson, *Influenza vaccination: policy versus evidence*, *BMJ*, v.333, p. 912 (Oct. 28, 2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1626345/>.)



177.

178. On September 14, 2020, Facebook and Science Feedback labeled CHD's post on CoVID-19 Testing PCR by Bose Ravenel, M.D., F.A.A.P as "False Information Found on Children's Health Defense." The "fact-check" placed over the post leads to an opposition article by Science Feedback that claims that a "misinterpreted New York Times report leads to a false claim that the number of COVID-19 cases in the US is inflated up to 90%." This "fact-check" is deceptive because, while the New York Times article is quoted in Dr. Ravenel's piece, it is merely one of several articles referenced by the author, and is not "misinterpreted" at all. Defendants were aware, or acted in reckless disregard of, these and other specific falsities in the Science Feedback opposition "fact-check," but posted it on CHD's page nonetheless, in furtherance of their fraudulent scheme.



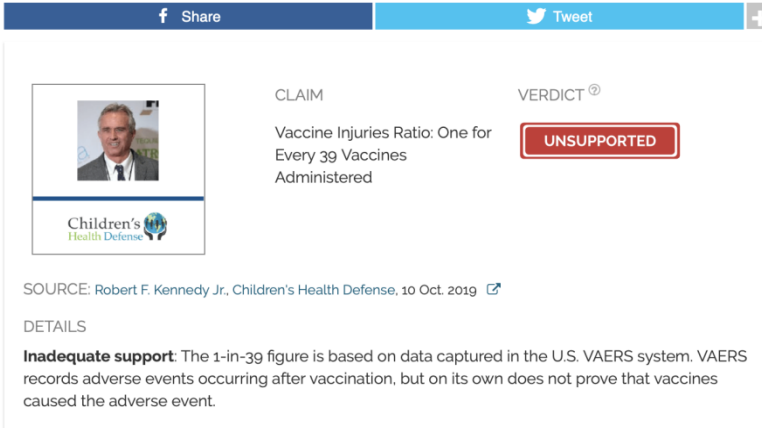
179.

180. On or about October 10, 2019, CHD posted a link to an editorial by RFK, Jr. about vaccine injuries. The article referenced studies such as the 2010 U.S. Health and Human

Services (HHS) pilot study by the Federal Agency for Health Research Quality (AHRQ) that looked at the prevalence of vaccine injuries reported to VAERS. R. Lazarus et al., *Grant Final Report: Electronic Support for Public Health – Vaccine Adverse Event Reporting System (ESP:VAERS)*, <https://digital.ahrq.gov/sites/default/files/docs/publication/r18hs017045-lazarus-final-report-2011.pdf>.

181. Science Feedback’s false and misleading “fact-check” asserts that the data captured from VAERS does not “prove” vaccines caused any adverse event. Yet, the data that RFK, Jr. references (2.6% of injuries, or 1 in 39) is taken directly from the study. Defendants were aware, or acted in reckless disregard, of these and other specific falsities in the Science Feedback opposition “fact-check,” but posted it on CHD’s page nonetheless, in furtherance of their fraudulent scheme. Currently, the post is no longer visible on CHD’s Facebook page and appears to have been taken down by Facebook.

Claim by Robert F Kennedy Jr that one “vaccine injury” occurs for every 39 vaccinations is unsupported by scientific data



CLAIM

Vaccine Injuries Ratio: One for Every 39 Vaccines Administered

VERDICT[®]

UNSUPPORTED

SOURCE: Robert F. Kennedy Jr., Children's Health Defense, 10 Oct. 2019

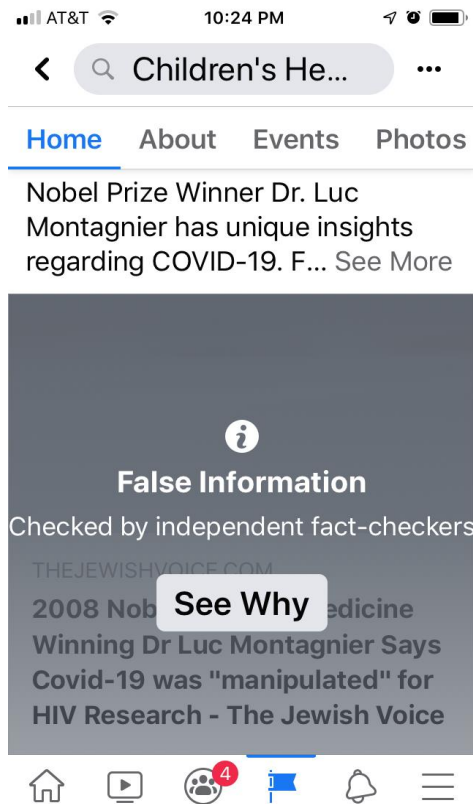
DETAILS

Inadequate support: The 1-in-39 figure is based on data captured in the U.S. VAERS system. VAERS records adverse events occurring after vaccination, but on its own does not prove that vaccines caused the adverse event.

182.

183. On April 16, 2020, CHD posted a link to an editorial in the journal *Jewish Voice*, stating that “Nobel Prize Winner Dr. Luc Montagnier has unique insights regarding COVID-19.” Facebook labeled the post “False Information.” The article reported that Dr. Luc Montagnier’s work showed that the “coronavirus genome contained sequences of another virus, ... the HIV virus (AIDS virus), but he was forced to withdraw these findings because “the pressure from the mainstream was too great.” Science Feedback’s “fact-check” is an

1 attempt to censor a debate on the open question of the origins of COVID-19. Defendants were
 2 aware, or acted in reckless disregard, of these and other specific falsities in the Science
 3 Feedback opposition “fact-check,” but posted it on CHD’s page nonetheless, in furtherance of
 4 their fraudulent scheme. The post can no longer be found on the CHD Facebook page and
 5 appears to have been removed.



184.

185. On September 3, 2020 and thereafter, CHD posted a link to an article on their
 website about oral polio vaccines causing polio outbreaks in Africa. Facebook posted a grey
 overlay with the flag that CHD’s post was “fact-checked” by Science Feedback, with a link to
 a Science Feedback opposition article which characterizes yet another article in the Journal,
21st Century Wire as “Inaccurate and Lacks Content.” Science Feedback’s “fact-check” is
 false and misleading in that it does not specifically address CHD’s article. Moreover, Science
 Feedback’s key point — that the oral polio vaccine contains a live but weakened form of the
 poliovirus which does not cause infection — is patently false. The CHD article cites several
 cases and studies, and quotes health officials who flatly state the opposite. Defendants were

1 aware, or acted in reckless disregard, of these and other specific falsities in the Science
 2 Feedback opposition “fact-check,” but posted it on CHD’s page, in furtherance of their
 3 fraudulent scheme, nonetheless.

09/03/20

Polio Vaccine Causing Polio Outbreaks in Africa, WHO Admits

By the Children’s Health Defense Team A year ago, news outlets briefly shone a light on the fact (a fact that makes public health officials squirm) that oral polio vaccines are causing polio outbreaks. With reports streaming in throughout 2019 regarding the circulation of vaccine-derived polioviruses in numerous African and Asian countries, a CDC [...]



186.

By the Children’s Health Defense Team



Health Feedback

Article Reviews

Claim Reviews

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Adequate immunization and improved sanitation together protect against infection from both wild and vaccine-derived poliovirus

127
SHARES

f Share

Tweet



CLAIM

‘UN Forced to Admit Gates-funded Vaccine is Causing Polio Outbreak in Africa’

VERDICT®

INACCURATE

SOURCE: Anonymous, 21st Century Wire, 4 Sep. 2020

DETAILS

Inaccurate: The oral polio vaccine contains a live but weakened form of the poliovirus that cannot cause the disease. In fact, virus shedding from vaccinated children can confer partial protection to unvaccinated children around them. The viruses that cause vaccine-derived polio cases are different from that contained in the oral polio vaccine, and arise only on very rare occasions in areas with poor sanitation.

Lacks context: The article fails to explain that vaccine-derived polio cases occur only in individuals who are not vaccinated, and that the number of polio cases derived from the oral vaccine is much lower than the number of cases caused by the wild poliovirus before the oral vaccine was available.

KEY TAKE AWAY

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Method

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Editor



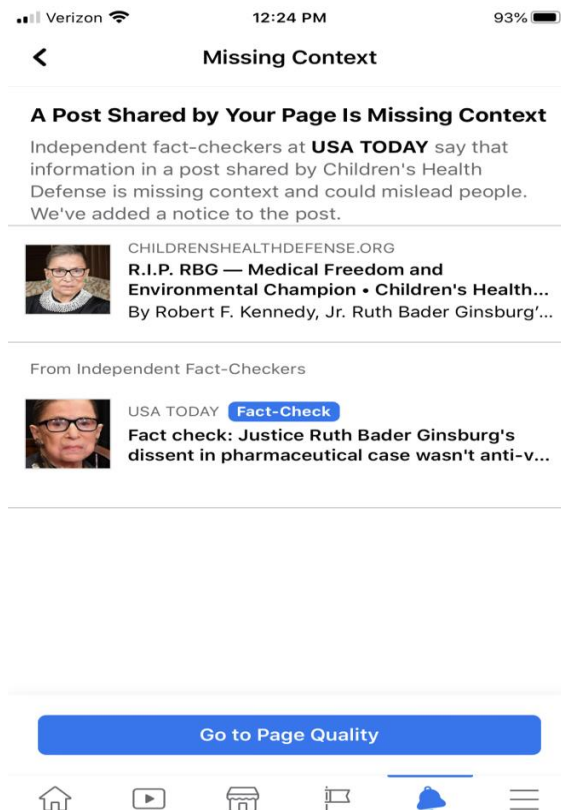
Iria Carballo-Carbajal
Science Editor, Health Feedback

Support our work

We depend on your support to operate.
Help us create a more trustworthy Internet!

187.

188. On September, 20, 2020, Facebook labeled an editorial tribute to Ruth Bader Ginsburg (“RBG”) as “Missing Context” and added a USA Today “fact-check” notice to the post taking issue with the term, “Medical Freedom.” In CHD’s editorial post entitled *RIP RBG – Medical Freedom and Environmental Champion*, RFK, Jr. writes that “Justice Ginsburg was a champion for safe vaccines” and lists her opinions and dissents which support his assertion. This application of “fact-checking” to editorial opinion is false and misleading. RFK, Jr.’s opinion is not “missing context” at all. RFK, Jr. also hails RBG as an “Environmental Champion,” and lists her written opinions which support why he believes this to be true – i.e., the same sort of evidence of RBG’s pedigree as he uses to support his “Medical Freedom Champion” assertion. Defendants were aware, or acted in reckless disregard of, these and other specific falsities in the Science Feedback opposition “fact-check,” but posted it on CHD’s page nonetheless, in furtherance of their fraudulent scheme.



189.

190. On or about May 29, 2020, CHD attempted to “boost” (i.e., pay Facebook for wider distribution) of an article entitled *Electromagnetism and Human Health: WiFi and Cell*

Phones. CHD received a notification from Facebook that the article had reached 5,014 users, and that the boost button was “unavailable.” This is the only open instance — although there have been many more surreptitious ones — in which Facebook either constrained, demoted or shadowbanned CHD’s 5G content, making it available only to CHD’s principals or a highly-limited number of CHD members, while misrepresenting to CHD and to its members that the content is more widely-available, and can be redistributed by them across Facebook’s platform. Over the past year or longer, the numbers of likes/shares of CHD’s 5G posts have decreased significantly from their numbers before Facebook began its fraudulent scheme. Facebook’s fundamental duplicity here is found both in its use of surreptitious methods and in its pretextual reasons for banning or demoting content which threatens its profit interests in global 5G deployment.



191.

5. Disabling CHD’s Fundraising and Ads.

192. On or about May 2, 2019 and thereafter, Facebook permanently deactivated the fundraising function, or “donate” button, on CHD’s Facebook page, in disregard of CHD’s 501(c)(3) non-profit status. In its termination email to CHD, Facebook’s “Charitable Giving

Team” fraudulently misrepresented that it took this action because CHD’s page was “in violation of [its] fundraising terms and conditions.” *Combatting Vaccine Misinformation*, *supra*, <https://about.fb.com/news/2019/03/combatting-vaccine-misinformation/>.

193. Also on or about May 2, 2019 and thereafter, Facebook blocked CHD and RFK, Jr., and subsequently Prizeo, their third-party advertising agency, from purchasing online ads to promote CHD, including most recently ads promoting its Summer 2020 fundraising drive. In its April 20, 2020 electronic notice rejecting the attempted transactions on behalf of CHD and RFK, Jr., Facebook fraudulently misrepresented to Prizeo that it took this action because CHD has “repeatedly posted content that has been disputed by third-party fact-checkers [for] promoting false content.”

6. Disabling CHD’s Right to “Appeal” These Actions.

194. On or about May 1, 2019, Facebook permanently disabled the “dispute” function on CHD’s account so that neither CHD, RFK, Jr., nor Prizeo could challenge Facebook’s actions through direct submission, and Facebook has ignored CHD’s written requests over the past eighteen months that both its content and full functionality be restored to CHD’s page.

7. Concealment of the Overall Scheme.

195. On or about May 1, 2019, for pretextual reasons alleged *infra*, Facebook began covertly to demote and/or ban content (“shadow-ban”) that CHD posted to its Facebook page, both vaccine- and 5G-related, effectively limiting its visibility and reach, and secondarily reducing ad revenue to CHD. Facebook owns a patent on social media shadowbanning. *See United States Patent No. 10,356,024*, Kanter et al. (Moderating content in an online forum), USPTO Patent Full-Text and Image Database, UNITED STATES PATENT AND TRADEMARK OFFICE (Jul 16, 2019), <http://patft.uspto.gov/netacgi/nph-Parser?Sect2=PTO1&Sect2=HITOFF&p=1&u=/netahtml/PTO/search-bool.html&r=1&f=G&l=50&d=PALL&RefSrch=yes&Query=PN/10356024> (last visited Aug. 15, 2020). The patent describes the mechanism by which shadowbanning is accomplished: In one embodiment, the social networking system blocks banned comments by analyzing the text of the comments. For example, if a comment includes a profane word, as provided in a list of

1 banned words, the social networking system will not display the comment to other users of the
2 social networking system.

3 196. Additionally, in one embodiment, Facebook also performs a “sentiment analysis”
4 to identify whether a comment includes sentiment that is banned under Facebook’s community
5 standards, e.g., derogatory racial epithets. Finally, Facebook’s patent permits it to train a
6 machine learning classifier to block comments based on Facebook content moderators’ actions
7 of manually deleting comments or unblocking comments in the online forum. In one
8 embodiment, the blocked comments are not displayed to the wider community of Facebook
9 users. However, the blocked comments are displayed to the commenting user and his or her
10 friends within the social networking system. As such, Facebook’s software creates a
11 simulacrum in which the “offending” user — here CHD — is not aware that their comment or
12 content is not displayed to other users of the forum. Since May 2019, Facebook has utilized
13 this deceptive scheme in order to covertly limit or block CHD’s content while misrepresenting
14 the visibility and reach of that content to CHD itself, and misrepresenting the totality of CHD’s
15 content to all third-party users.

16 197. Moreover, a “whistleblower” recently disclosed Facebook internal documents,
17 which reveal the extent of Facebook’s sophisticated designs aimed at user behavior
18 modification in order to limit the spread of “undesirable” information. Facebook boasted
19 internally that it has employed these methods based on its psychological research
20 demonstrating their efficacy because nearly all third-party users (95%) will be dissuaded from
21 clicking through to the original content by the very design and trade dress elements of
22 Facebook’s warnings. This Facebook design document shows a technical discussion of such
23 mechanisms:
24
25
26
27
28



Seiji Yamamoto - Data Science Manager

September 28, 2017

Introducing friction via the Troll Twilight Zone will confuse and demoralize them.

Tactic 1: Interfere with troll operations

• Troll Twilight Zone GK

- 1. Find troll accounts and add them to a special GK
- 2. When triggered, the users behind the Troll GK will experience the following
 - drastically limited bandwidth for a few hours
 - auto-logout every few minutes
 - auto-direct to home timeline every few minutes
 - comments and posts that they spend time crafting will magically fail to upload, then user will be logged out
- 3. Trigger the "special features" when
 - Raids are detected, e.g. when known troll associates are simultaneously viewing the same content
 - User uploads a comment or post with a match on our bank of known troll munitions (see Appendix)
 - Leading up to important elections (pre-cautionary)
 - Just because it's Nov 4 (pre-cautionary)

198.



Seiji Yamamoto - Data Science Manager

September 28, 2017

When a user does something egregious, warranting an account suspension or deletion, we should notify the friend network...

Tactic 2: Notify friends when high-confidence account suspensions and deletions take place

- When a user does something egregious, warranting an account suspension or deletion, we should notify the friend network
 - "John Smith's account has been suspended for 7 days because he shared hate speech in the group Kekistani Special Forces"
 - "John Smith's account has been deactivated for community violations"
 - "Four of your direct friend connections were found to be fraudulent accounts so we have deactivated them. Learn more about how to spot fake accounts [here](#)."
- Fear of being outed as a miscreant is what regulates behavior in real life and we should re-introduce that to the online world
- Notified users who accidentally befriended the offender might be more mindful of suspicious accounts, increasing overall herd immunity
- Notified users who are also offenders might curtail their own activities
- We don't necessarily need to do many of these to strike fear in the hearts of trolls, so these can be very high touch notifications
- This would provide clear public signaling that FB takes the issue seriously

199.

200. At an April 17, 2020, CNN “Global Town Hall,” Zuckerberg boasted that “we work with independent fact-checkers [] and warning labels work. We know that because 95% of the time when someone sees a piece of information that has a fact-check on it, they don’t click through and consume that information.” *Entire CNN April 16 coronavirus town hall, supra*, <https://www.cnn.com/videos/business/2020/04/17/entire-april-16-coronavirus-town-hall-part-5-sot-vpx.cnn>.

201. Indeed, Facebook has used “A/B testing” (testing users’ response to variants) to achieve its intended psychological effect on user behavior. Essentially, similar demographic test-groups are shown two (or more) different behavior modification mechanisms, and the most effective mechanism is chosen based on statistical results in terms of which variant achieves the desired user behavior. *About A/B Testing*, Business Help Center, FACEBOOK FOR BUSINESS, <https://www.facebook.com/business/help/1738164643098669?id=445653312788501> (last visited Aug. 14, 2020).

202. The “whistleblower” also described Facebook’s use of “troll scores” that were assigned to accounts and used to assess what punitive actions it would take against the accountholder. There is no accountability or accountholder recourse, since Facebook compiles its punitive “troll scoring” without the holder’s knowledge. *Anonymous – Facebook*, PROJECT VERITAS (Apr. 6, 2020), <https://www.projectveritas.com/news/anonymous-facebook/>.

203. The “whistleblower” also revealed Facebook’s use of a “deboosting” score, which it uses to “deboost” content produced by the accountholder’s page. Facebook deployed a similar, if not the same algorithm, to limit the visibility and reach of CHD content. As explained by the whistleblower and screenshots obtained by Project Veritas, the ActionDeboostLiveDistribution tag is designed to “deboost” content produced by the pages it is attached to, specifically suppressing the distribution of livestreams from that page. A current Facebook employee confirmed to Project Veritas that the code could reduce a “video’s visibility in news feeds, remove sharing features, and disable interactive notifications.”

204. The “whistleblower’s” account elaborates upon newspaper and magazine articles about internal and top-down biases in Facebook’s content control processes. A *Wired*

1 magazine article reported on Facebook’s use of a custom algorithm — “Click Gap” —
 2 specifically to limit the spread of whatever Facebook terms “fake news.” Facebook deployed a
 3 similar, if not the same algorithm, to damage CHD, by covertly limiting the visibility and reach
 4 of its content. An April 18, 2019 *Wired* article explains: “Click-Gap, which Facebook is
 5 launching globally today, is the company’s attempt to limit the spread of websites that are
 6 disproportionately popular on Facebook compared with the rest of the web. If Facebook finds
 7 that tons of links to a certain website are appearing on Facebook, but few websites on the
 8 broader web are linking to that site, Facebook will use that signal, among others, to limit the
 9 website’s reach.” *Facebook Is Changing News Feed (Again) to Stop Fake News*, WIRED (Apr.
 10 10, 2019), <https://www.wired.com/story/facebook-click-gap-news-feed-changes/>.

11 205. A CNET article reported that Facebook planned to use “updated machine
 12 learning” to detect more potential “hoaxes” and send them to third-party “fact-checkers.”
 13 Facebook used the same or similar machine learning systems to detect and flag CHD content
 14 for sending to Facebook’s “fact-checker” affiliates. R. Cheng, *Facebook will use machine*
 15 *learning to fight fake news*, CNET (Aug. 3, 2017), [https://www.cnet.com/news/facebook-will-](https://www.cnet.com/news/facebook-will-use-machine-learning-to-fight-fake-news/)
 16 [use-machine-learning-to-fight-fake-news/](https://www.cnet.com/news/facebook-will-use-machine-learning-to-fight-fake-news/).

17 206. The Doe defendants comprise, *inter alia*, members of an enterprise with or
 18 within Facebook working directly to label, suppress, and censor vaccine and 5G-network
 19 related content on CHD’s Facebook page. The enterprise operates under the direct supervision
 20 and control of Facebook’s corporate leadership and Zuckerberg. It includes individual
 21 Facebook officers or employees (known only to Facebook) responsible for key design elements
 22 that enable widespread AI-driven “fact-check” content suppression and manipulation. The
 23 enterprise manipulates technical processes to “shadow ban” CHD, i.e., deceive Plaintiff as to
 24 the reach and visibility of content on its Facebook page, and prevent its content from being
 25 disseminated. The enterprise also exploits internal marketing and psychometric data to
 26 “sandbox” users, i.e., selectively hide content from users based on their psychological profile,
 27 and ward off the possibility that alternative content may influence their views. “Sandbox” is an
 28

1 apt term for isolating users in an echo chamber of like-minded viewpoints where existing
2 views are reinforced, and alternative or opposing ideas are not considered.

3 207. Facebook shows CHD's vaccine- and 5G network-safety content to CHD's
4 already-"decided" users, but Facebook does not show it to any other "undecided" or "opposed"
5 users. Thus, Facebook seeks to rigidify users' positions on matters of public concern, and
6 foreclose public debate, or any possibility of the societal "ultimate good [] reached by free
7 trade in ideas" (*see Abrams v. United States*, 250 U.S. at 630 (Holmes, J., dissenting)), while
8 concealing its methods and effects. Facebook, with the government's assistance, blocks content
9 critical of the CDC and WHO. The First Amendment protects against this new "privatized"
10 form of governmental censorship. This is also a classic method of fraud concealment: if
11 Plaintiff does not know what defendants are telling or showing third parties, Plaintiff is less
12 likely to sue. *See, e.g., Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008) ("suppose
13 an enterprise that wants to get rid of rival businesses mails misrepresentations about them to
14 their customers and suppliers, but not to the rivals themselves").

15 208. On December 27, 2018, New York Times reporter Max Fisher wrote that, based
16 on his review of Facebook internal documents, Facebook's "closely-held rules" for moderating
17 content on its website had "numerous gaps, biases and outright errors." Fisher characterized
18 those errors as a byproduct of the over- and under-inclusive nature of binary rules when
19 applied to "highly complex issues," plus the highly time-sensitive ("eight to 10 seconds per
20 post") workload constraint Facebook puts on the decisions at issue. He quoted Facebook
21 officer Bickert as saying, "we have billions of posts every day, we're identifying more and
22 more potential violations using our technical systems. At that scale, *even if you're 99 percent*
23 *accurate, you're going to have a lot of mistakes*" (emphasis added). (Here, Facebook's
24 wrongdoing is deliberate, a form of decision-making which Bickert's reference to "mistakes"
25 elides.) Fisher reported that, "By telling moderators to follow the rules blindly, Facebook
26 hopes to guard against bias and to enforce consistency." But, "Facebook has little visibility into
27 the giant outsourcing companies, which largely police themselves, and has at times struggled
28 to control them." M. Fisher, *Inside Facebook's Secret Rulebook for Global Political Speech*,

1 NEW YORK TIMES (Dec. 27, 2018), [https://www.nytimes.com/2018/12/27/world/facebook-](https://www.nytimes.com/2018/12/27/world/facebook-moderators.html)
 2 moderators.html.

3 209. Fisher further reported that, “[t]hough Facebook says its focus is protecting
 4 users, the documents suggest that other concerns come into play. [For example, Pakistan-
 5 related] guidelines warn moderators against creating a “PR fire” by taking any action that
 6 could “have a negative impact on Facebook’s reputation or even put the company at legal risk.
 7 [. . .] And its decisions often skew in favor of governments, which can fine or regulate
 8 Facebook.” *Id.*

9 210. More recently, on May 16, 2020, New York Times reporters Mike Isaac, Sheera
 10 Frenkel and Cecilia Kang wrote in their article *Now More Than Ever, Facebook Is a ‘Mark*
 11 *Zuckerberg Production’* that:

12 [A]t Facebook, for more than a decade, Mark Zuckerberg was a
 13 product guy’s product guy. In practice, this meant [. . .] he was
 14 comfortable delegating in areas that interested him less keenly —
 15 including [. . .] the realm of Facebook policy around what kind of
 16 speech was and was not permitted. Those subjects fell into a
 specific category: Too important to ignore, but not exactly what a
 young billionaire wants to spend all of his time on.

17 [After the 2016 election] Mr. Zuckerberg resolved to take control
 18 of the global superpower in which he already dominated the voting.
 19 [In July 2018,] Mr. Zuckerberg called a meeting with his top
 20 lieutenants. [. . .] *Mr. Zuckerberg said he would be making more*
 21 *decisions on his own*, based on his instincts and vision for the
 22 company. [. . .] *Mr. Zuckerberg also began to participate more*
 23 *directly in meetings that had previously been Ms. Sandberg’s*
 24 *domain — from the nitty-gritty of taking down disinformation*
 25 *campaigns, to winding philosophical discussions on how Facebook*
 26 *ought to handle political ads. [. . .] Other board disagreements,*
 27 *specifically around political advertising and the spread of*
 28 *misinformation, always ended with Mr. Zuckerberg’s point of view*
winning out. [. . .] To replace [departing board members], Mr.
Zuckerberg picked [. . .] Peggy Alford, the former chief financial
officer of the Chan Zuckerberg Initiative.

Mike Isaac, Sheera Frenkel & Cecilia Kang, *Now More Than Ever, Facebook Is a ‘Mark*

1 *Zuckerberg Production*,’ NEW YORK TIMES (May 16, 2020),
 2 <https://www.nytimes.com/2020/05/16/technology/zuckerberg-facebook-coronavirus.html>
 3 (emphases added).

4 211. Facebook contracted with Science Feedback, a French organization which
 5 Facebook funds, to “fact-check” CHD’s content, and directed Science Feedback to deploy
 6 Facebook’s circular WHO and CDC definitions of “vaccine misinformation.” Science
 7 Feedback is wholly dependent upon Facebook, both financially and editorially. On information
 8 and belief, neither Facebook nor Science Feedback makes any *genuinely* independent effort to
 9 check the veracity of the censored or labeled CHD content.

10 212. Instead, Facebook created a classification system that provides Science Feedback
 11 with a limited set of nine pre-populated classifications to apply to a posting:

- 12 • False
- 13 • Partly False
- 14 • True
- 15 • False Headline
- 16 • Not Eligible
- 17 • Satire
- 18 • Opinion
- 19 • Prank Generator
- 20 • Not Related

21 *Fact-Checking on Facebook*, Business Help Center, FACEBOOK FOR BUSINESS,
 22 <https://www.facebook.com/help/publisher/182222309230722> (last visited Aug. 14, 2020).

23 213. Apparently, if Science Feedback decides that an article is not “false,” “partly
 24 false,” or “false headline” but falls into any of the other six classifications (i.e., True, Not
 25 Eligible, Satire, Opinion, Prank Generator, and Not Related), Facebook does not display (or
 26 does not prominently display) a link to the “See Why” window or to Science Feedback’s
 27 oppositional article.
 28

214. Under this arrangement, Facebook pays Science Feedback to classify content, and Facebook flags content for Science Feedback to evaluate and classify as part of their partnership. Science Feedback is paid by Facebook to find false stories, and here willfully marked Plaintiff's content as "false" or "partly false" in order to generate traffic to its website through the warning and link, and to further its contractual partnership with Facebook. The "fact-checking" system Facebook created encourages this type of mislabeling. The Science Feedback fact-checkers have an obvious incentive to categorize a post as "False" rather than an accurate but less damaging classification of "Opinion," because that is the only way Facebook will insert the clear warning with a prominent link to Science Feedback's oppositional article. Facebook deceives its users by materially misrepresenting that its "fact-checkers" are "independent," contractually or editorially. Significantly, the arrangement also permits Facebook and Science Feedback to create categorical exemptions from "fact-checking" where it suits Zuckerberg's political or other biases, e.g., the "opinion" exemption for climate science deniers. Emily Atkin, *Facebook creates fact-checking exemption for climate deniers*, *supra*, <https://heated.world/p/facebook-creates-fact-checking-exemption>.

215. As to each of the CHD and RFK, Jr. articles and video posts, which Facebook and Science Feedback, or Poynter/PolitiFact labeled "False Information" or "Partly False Information," *see supra*, Science Feedback and Poynter/PolitiFact's opposition articles show, at most, that the specific matter asserted was the opinion of its authors on fully-disclosed limited facts, not that it was a "false" or "partly false" statements of fact. Nonetheless, Facebook directed its surrogate "fact-checkers" to label these posts "false" or "partly false," as a pretext for Facebook to publish the grey overlay with those "false" or "partly false information" labels over CHD's posts, and to publish links to their opposition content. The "fact-checker" surrogates complied because it was in their financial interests to do so. Hence, Science Feedback designated the articles and videos as "False" or "Partly False," not "Opinion." Facebook then proceeded to gray out the articles and videos and placed its warnings over them. By using Facebook's pre-populated options other than "opinion," to mislabel the articles and videos, Science Feedback and Facebook intentionally tell the public

1 that Plaintiff is presenting false information, when they know that the information presented is,
2 at most, opinion and *not* false fact.

3 **8. Continuing Injuries to CHD.**

4 216. CHD's primary source of revenue derives from membership dues and donations
5 that CHD solicits on its website, through PayPal and Stripe, and formerly on its Facebook
6 page. In addition to that monetary interest, attracting visitors to the CHD Facebook page, and
7 through it to CHD's website, enables CHD and RFK, Jr., their authors, and readers to associate
8 and to engage in speech on matters of mutual concern. Prior to March 2019, CHD's Facebook
9 page content generated significant third-party user traffic to CHD's website, and significant
10 membership fees and donations to CHD.

11 217. From January to May 2019, CHD generated \$41,241 in user donations from its
12 Facebook page. In May 2019 alone, CHD received \$24,872, until Facebook deactivated CHD's
13 donate function. CHD has not received any further donation revenue through Facebook.

14 218. Facebook has exclusive possession, custody, and control of evidence to assess
15 the full extent of the damages to Plaintiff's business and property interests which defendants'
16 deceptions have proximately caused, e.g.: (1) how many visitors to CHD's page instead click
17 through to "go to CDC.gov"; (2) how many are diverted from CHD's content due to "fact-
18 check" labels; (3) how much has Facebook-wide traffic of such content decreased; (4) what are
19 the daily click-through, cost-per-click, conversion, and cost-per-action rates for visitors to
20 Plaintiff's Facebook page — all of which is information Facebook compiles in the ordinary
21 course of its business operations of gathering, manipulating, and marketing psychometric and
22 other data on users. Plaintiff lacks access to these missing pieces of the puzzle.

23 219. As a result of defendants' actions, third-party user visits from CHD's Facebook
24 page to CHD's website declined significantly since March 2019, while visits to CHD's website
25 grew from other interactive computer services (e.g., Bing and DuckDuckGo) that have not
26 implemented Facebook's smear campaign. CHD's Twitter account has grown by 80,000
27 followers during the past twelve months, while its Facebook account has grown by only 20,000
28 followers, despite the smear campaign.

220. Additionally, CHD’s trade reputation and “goodwill” are traditional property rights whose value defendants have diminished through their fraudulent misconduct. CHD’s reputation for accurate and timely content is a source of its goodwill, and paramount to its operations and success. “[A] man’s right to the continued enjoyment of his trade reputation and the good will that flows from it, free from unwarranted interference by others, is a property right[.]” *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 413 (1916). Defendants targeted CHD, and the injuries to CHD’s organizational trade and reputation were both foreseeable and intended. *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. at 658.

221. CHD is the most direct victim of Facebook’s “vaccine misinformation” smear campaign, and is best positioned to sue; its financial losses are provable, and far more than a “bit part in the scheme” (*Kelly v. United States*, 140 S. Ct. 1565, 1573 (2020)), and there is no risk of duplicative recoveries because no one else can recover CHD’s losses. At the same time, Facebook controls the proof of that portion of claimed damages attributable to the defendants’ unlawful conduct. *See Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 S. Ct. 1377, 1393 (2014) (“When a defendant harms a Plaintiff’s reputation by casting aspersions on its business, the Plaintiff’s injury flows directly from the audience’s belief in the disparaging statements....”).

D. Material Questions of Vaccine Safety.

222. By 1986, the “litigation costs associated with claims of damage from vaccines had forced several companies to end their vaccine research and development programs as well as to stop producing already-licensed vaccines.” Institute of Medicine, *Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality*, at 2 (1994). In response, Congress enacted the National Childhood Vaccine Injury Act, codified at 42 U.S.C. §§ 300aa-1 through 300aa-34 (the “1986 Act”), which virtually eliminated economic liability for pharmaceutical companies for injuries caused by their vaccines. 42 U.S.C. § 300aa-11 (“No person may bring a civil action for damages in the amount greater than \$1,000 or in an unspecified amount against a vaccine administrator or manufacturer in a State or Federal court for damages arising from a vaccine-related injury or death.”); *Bruesewitz v. Wyeth LLC*, 562

1 U.S. 223, 243 (2011) (“we hold that the National Childhood Vaccine Injury Act preempts all
 2 design-defect claims against vaccine manufacturers brought by Plaintiffs who seek
 3 compensation for injury or death caused by vaccine side effects”); *cf. Davis v. Wyeth*
 4 *Laboratories*, 399 F.2d 121, 129-30 (9th Cir. 1968) (recipient of polio vaccine entitled to make
 5 a “true choice judgment” whether to be inoculated with Sabin III vaccine, an “unavoidably
 6 unsafe” product).

7 223. By granting pharmaceutical companies immunity from actual or potential
 8 liability from injuries caused by vaccines, Congress eliminated the market forces relied upon to
 9 assure the safety of these typically mandatory consumer products. Recognizing that it
 10 eliminated the financial incentive for pharmaceutical companies to assure the safety of their
 11 vaccine products, Congress placed the responsibility for vaccine safety in the hands of the
 12 Department of Health and Human Services (“HHS”) and its agencies, most pertinently here,
 13 the CDC. 42 U.S.C. § 300aa-27(a) (“Mandate for safer childhood vaccines”) provides, *inter*
 14 *alia*, that the Secretary of HHS “(1) shall promote the development of childhood vaccines that
 15 result in fewer and less serious adverse reactions [. . .], and (2) make or assure improvements
 16 in, and otherwise use the authorities of the Secretary with respect to . . . research on vaccines,
 17 in order to reduce the risks of adverse reactions to vaccines.”

18 224. In executing their statutory duties, HHS and the CDC must avoid conflicts of
 19 interest with pharmaceutical companies because these agencies are responsible for promoting
 20 safe vaccines, and for defending against claims of vaccine injuries. Indeed, the CDC is the
 21 single largest purchaser and distributor of vaccines (nearly forty percent of the total
 22 administered) in the United States. In 2019 alone, the CDC entered into contracts to purchase
 23 and distribute up to \$5.1 billion of the three leading manufacturers’ vaccine products.
 24 *See 2019 Vaccines for Children*, State of Georgia, GOVERNMENT CONTRACTS,
 25 [https://www.governmentcontracts.us/government-contracts/opportunity-](https://www.governmentcontracts.us/government-contracts/opportunity-details/NBD00159991194385117.htm)
 26 [details/NBD00159991194385117.htm](https://www.governmentcontracts.us/government-contracts/opportunity-details/NBD00159991194385117.htm) (last visited Aug. 15, 2020); *Indefinite Delivery*
 27 *Contract 75D30119D04518*, Federal Contract IDV Award, GOVTRIBE (Jun. 29, 2020),
 28 <https://govtribe.com/award/federal-idv-award/indefinite-delivery-contract-75d30119d04518>;

1 2019 Vaccines for Children, State of Georgia, GOVERNMENT CONTRACTS AND BIDS,
 2 <https://www.govcb.com/government-bids/vaccines-for-children->
 3 [NBD00159022703927119.htm](https://www.govcb.com/government-bids/vaccines-for-children-NBD00159022703927119.htm) (last visited Aug. 15, 2020).

4 225. And, while HHS is obliged to report to Congress every two years on the actions
 5 HHS has taken to make and assure improvements in the licensing, manufacturing, adverse
 6 reaction reporting, research, safety and efficacy testing of vaccines in order to reduce the risk
 7 of adverse vaccine reactions, HHS apparently has never complied with that statutory
 8 obligation. *See Stipulated Order*, U.S.D.C. S.D. N.Y. No. 18-cv-03215 (JMF) (filed Jul. 9,
 9 2018) & *Press Release*, INFORMED CONSENT ACTION NETWORK (ICAN) (Jul. 13, 2018),
 10 <https://www.icandecide.org/wp-content/uploads/2019/09/Stipulated-Order-copy-1.pdf>; 42
 11 U.S.C. § 300aa-27.

12 226. Under the 1986 Act, the CDC plays a central role in ensuring the safety of the 72
 13 doses of vaccines on the CDC's Child and Adolescent Immunization Schedule. Most of these
 14 vaccines, which are vigorously promoted by the CDC for injection into America's children, are
 15 manufactured and sold by four pharmaceutical companies -- GlaxoSmithKline ("GSK"),
 16 Sanofi S.A. ("Sanofi"), Pfizer, and Merck & Co. ("Merck").

17 227. If a vaccine injures an individual, the injured individual must (pursuant to the
 18 1986 Act) bring a claim in the National Vaccine Injury Compensation Program ("VICP"),
 19 administered in the Federal Court of Claims. In such actions, the Secretary of HHS is the
 20 respondent with the Department of Justice as its litigation counsel, and these government
 21 lawyers regularly and vigorously defend against any claim that a vaccine caused injury. (42
 22 U.S.C. § 300aa-12; *Vaccine Injury Compensation Program: Addressing Needs and Improving*
 23 *Practices, Sixth Report by the Committee on Government Reform*, Union Calendar No. 575,
 24 106th Congress, 2d Session, House Report 106-977, HOUSE COMMITTEE ON GOVERNMENT
 25 REFORM HEARINGS (Oct. 12, 2000), [https://www.congress.gov/106/crpt/hrpt977/CRPT-](https://www.congress.gov/106/crpt/hrpt977/CRPT-106hrpt977.pdf)
 26 [106hrpt977.pdf](https://www.congress.gov/106/crpt/hrpt977/CRPT-106hrpt977.pdf). As explained by HHS, which administers the program, listed injuries "are
 27 presumed to be caused by vaccines unless another cause is proven" if occurring within a given
 28 time frame post-vaccination. *Frequently Asked Questions*, National Vaccine Injury

1 Compensation Program, HEALTH RESOURCES & SERVICES ADMINISTRATION,
 2 <https://www.hrsa.gov/vaccine-compensation/FAQ/index.html> (last visited Aug. 14, 2020).
 3 Total compensation paid over the life of the VICP from FY 1988 through May 2019 is
 4 approximately \$4.1 billion. *Data & Statistics*, HEALTH RESOURCES & SERVICES
 5 ADMINISTRATION (May 1, 2019), [https://www.hrsa.gov/sites/default/files/hrsa/vaccine-](https://www.hrsa.gov/sites/default/files/hrsa/vaccine-compensation/data/monthly-stats-may-2019.pdf)
 6 [compensation/data/monthly-stats-may-2019.pdf](https://www.hrsa.gov/sites/default/files/hrsa/vaccine-compensation/data/monthly-stats-may-2019.pdf).

7 228. At the same time, the plight of America's children is that 54% (40 million) of
 8 them suffer from chronic illnesses such as deadly allergies, asthma, eczema, anxiety,
 9 depression, sensory abnormalities; 13% (9 million) are in special education; 11% (8 million)
 10 have Attention Deficit Hyperactivity Disorder ("ADHD"); 2.7% (2 million) have or will be
 11 diagnosed with Autism; 0.0035% (260,000) will be diagnosed with cancer by age 19; and
 12 49.5% of teens aged 13 to 18 have (or have had) a mental health disorder. *See, e.g.,* Christina
 13 D.Bethell, Ph.D. et al., *A National and State Profile of Leading Health Problems and Health*
 14 *Care Quality for US Children: Key Insurance Disparities and Across-State Variations*,
 15 ACADEMIC PEDIATRICS, Volume 11, Issue 3, Supplement, May–June 2011, pp. S22-S33,
 16 <https://www.sciencedirect.com/science/article/pii/S1876285910002500> [54% chronic illness];
 17 *Students with Disabilities*, NATIONAL CENTER FOR EDUCATION STATISTICS (May 2020),
 18 https://nces.ed.gov/programs/coe/indicator_cgg.asp [13% special education]; Susanna N.
 19 Visser, MS et al., *Trends in the Parent-Report of Health Care Provider-Diagnosed and*
 20 *Medicated Attention-Deficit/Hyperactivity Disorder: United States, 2003–2011*, JOURNAL OF
 21 THE AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY, Volume 53 Number 1
 22 (January 2014), [https://jaacap.org/article/S0890-8567\(13\)00594-7/fulltext](https://jaacap.org/article/S0890-8567(13)00594-7/fulltext) [11% ADHD]. This
 23 level of chronic illness and disability among children is unprecedented in the United States.

24 229. Significantly, no scientific studies have tested the entire immunization schedule
 25 or compared the differences in health outcomes between children vaccinated according to the
 26 CDC's full 72-dose vaccine schedule and children who have remained partially, or completely,
 27 unvaccinated. *See* Institute of Medicine, *Childhood Immunization Schedule and Safety:*
 28 *Stakeholder Concerns, Scientific Evidence, and Future Studies*, NATIONAL ACADEMIES PRESS

1 (2013), pp. 5-6, <https://doi.org/10.17226/13563>. Simply put, no studies have refuted the
 2 biologically-plausible hypothesis that the CDC's vaccine schedule is contributing *in some*
 3 *degree* to the epidemic of chronic childhood illnesses.

4 230. Vaccines are among the pharmaceutical industry's best-selling products. Andrew
 5 Ward, *Vaccines are among big pharma's best-selling products*, FINANCIAL TIMES (Apr. 24,
 6 2016), <https://www.ft.com/content/93374f4a-e538-11e5-a09b-1f8b0d268c39>. According to
 7 two recent market research reports, the global vaccine market was over \$41 billion in 2019, is
 8 projected to reach over \$58 billion by 2024, and over \$93 billion by 2026. *Vaccines Market -*
 9 *Global Forecast to 2024*, MARKETSANDMARKETS (January 2020),
 10 <https://www.marketsandmarkets.com/Market-Reports/vaccine-technologies-market-1155.html>;
 11 *Vaccines Market Size, Share & Industry Analysis, 2020-2027*, FORTUNE BUSINESS INSIGHTS,
 12 <https://www.fortunebusinessinsights.com/industry-reports/vaccines-market-101769> (last
 13 visited Aug. 14, 2020).

14 231. Yet, as bioethics professor Carl Elliott wrote in a July 2, 2020 New York Review
 15 of Books article, "[I]t would also be a mistake to assume that drug makers will be honest and
 16 open about their research results. It is not just that many have repeatedly failed to publish
 17 unfavorable data. As the former editor of The British Medical Journal has written, many have
 18 simply designed their research studies to produce the results they want. Medical journal editors
 19 have been raising the alarm about this for over fifteen years now. Between 1991 and 2010,
 20 according to Public Citizen, the pharmaceutical industry was the leading defrauder of the
 21 federal government, as measured by penalties paid for violating the False Claims Act." Carl
 22 Elliott, *An Ethical Path to a Covid Vaccine*, NEW YORK REVIEW OF BOOKS (July 20, 2020),
 23 <https://www.nybooks.com/articles/2020/07/02/ethical-path-covid-19-vaccine/>.

24 232. Criticism of the CDC, discussion of conflicts of interest within the organization
 25 and their effect on vaccine safety were open topics among the public and lawmakers not long
 26 ago. In 2006, Reps. Dr. Dave Weldon (R-FL), and Carolyn Maloney (D-NY), introduced a bill
 27 that would give responsibility for vaccine safety to an independent agency within DHHS, and
 28

1 remove most vaccine safety research from the CDC. While the bill did not pass, it was openly
2 recognized that there were conflicts of interest.

3 233. There was bipartisan scrutiny of the CDC. On February 22, 2006, a letter to Dr
4 David Schwartz, Director of the National Institute of Environmental Health Sciences, signed
5 by U.S. Senators Joe Lieberman (D-Conn) and Debbie Stabenow (D-Mich), and members of
6 the House Representatives including, Dr Dave Weldon, (R-Fla) Chris Smith, (R-NJ), Carolyn
7 Maloney, (D-NY), Dan Burton, (R-Ind), Joseph Crowley, (D-NY), and Maurice Hinchey, (D-
8 NY) stated, “If the federal government is going to have a study (regarding the flu vaccine)
9 whose results will be broadly accepted, such a study cannot be led by the CDC.” Evelyn
10 Pringle, *Lawmakers Sever Ties Between CDC and Big Pharma*, LAWYERS AND SETTLEMENTS
11 (Aug. 21, 2006) [https://www.lawyersandsettlements.com/legal-news/drugs-](https://www.lawyersandsettlements.com/legal-news/drugs-medical/CDC_Big_Pharma-00285.html)
12 [medical/CDC_Big_Pharma-00285.html](https://www.lawyersandsettlements.com/legal-news/drugs-medical/CDC_Big_Pharma-00285.html). At the time, Dr Weldon stated, “There's an enormous
13 inherent conflict of interest within the CDC and if we fail to move vaccine safety to a separate
14 independent office, safety issues will remain a low priority and public confidence in vaccines
15 will continue to erode.”

16 234. In recent years, The Atlantic Monthly among others has published stories critical
17 of the CDC’s “internal scandal and funding issues.” *See, e.g.,* Vann. R. Newkirk II, *Is the CDC*
18 *Losing Control?*, THE ATLANTIC (Feb. 3, 2018), [https://www.theatlantic.com/politics/archive/](https://www.theatlantic.com/politics/archive/2018/02/cdc-scandal-preparedness-budget/552200/)
19 [2018/02/cdc-scandal-preparedness-budget/552200/](https://www.theatlantic.com/politics/archive/2018/02/cdc-scandal-preparedness-budget/552200/). And, during the current COVID-19
20 pandemic, journalists and public officials alike have increasingly questioned whether the CDC
21 is a truly reliable or up-to-date source of public health information. *See, e.g.,* Alexis C.
22 Madrigal & Robinson Meyer, *How Could the CDC Make That Mistake?*, THE ATLANTIC (May
23 21, 2020), [https://www.theatlantic.com/health/archive/2020/05/cdc-and-states-are-](https://www.theatlantic.com/health/archive/2020/05/cdc-and-states-are-misreporting-covid-19-test-data-pennsylvania-georgia-texas/611935/)
24 [misreporting-covid-19-test-data-pennsylvania-georgia-texas/611935/](https://www.theatlantic.com/health/archive/2020/05/cdc-and-states-are-misreporting-covid-19-test-data-pennsylvania-georgia-texas/611935/). On May 9, 2020, Dr.
25 Deborah Birx, the White House Coronavirus Response Coordinator, reportedly stated, “*There*
26 *is nothing from the CDC that I can trust.*” Josh Dawsey, Ashley Parker, Philip Rucker and
27 Yasmeen Abutaleb, *As deaths mount, Trump tries to convince Americans it's safe to inch back*
28 *to normal*, WASHINGTON POST (May 9, 2020),

1 [https://www.washingtonpost.com/politics/as-deaths-mount-trump-tries-to-convince-americans-](https://www.washingtonpost.com/politics/as-deaths-mount-trump-tries-to-convince-americans-its-safe-to-inch-back-to-normal/2020/05/09/bf024fe6-9149-11ea-a9c0-73b93422d691_story.html)
 2 [its-safe-to-inch-back-to-normal/2020/05/09/bf024fe6-9149-11ea-a9c0-](https://www.washingtonpost.com/politics/as-deaths-mount-trump-tries-to-convince-americans-its-safe-to-inch-back-to-normal/2020/05/09/bf024fe6-9149-11ea-a9c0-73b93422d691_story.html)
 3 [73b93422d691_story.html](https://www.washingtonpost.com/politics/as-deaths-mount-trump-tries-to-convince-americans-its-safe-to-inch-back-to-normal/2020/05/09/bf024fe6-9149-11ea-a9c0-73b93422d691_story.html) (emphasis supplied). Similarly, on June 3, 2020, Dr. Ashish Jha, the
 4 director of the Harvard Global Health Institute, stated, “*The CDC is no longer the reliable go-*
 5 *to place.*” Eric Lipton, et al., *The CDC waited 'its entire existence for this moment.' What went*
 6 *wrong?*, NEW YORK TIMES (Jun. 2, 2020), [https://www.sfgate.com/news/article/The-CDC-](https://www.sfgate.com/news/article/The-CDC-Waited-Its-Entire-Existence-for-This-15312642.php)
 7 [Waited-Its-Entire-Existence-for-This-15312642.php](https://www.sfgate.com/news/article/The-CDC-Waited-Its-Entire-Existence-for-This-15312642.php). CHD and RFK, Jr. have echoed many of
 8 their concerns, yet CHD has been singled out for Facebook’s misleading “fact-checks,” and its
 9 falsely disparaging warning label which trumpets the CDC “party line.”

10 **E. Material Questions of 5G Network Safety.**

11 235. According to the FCC, “[w]ithin the next few years, 5G networks . . . will make
 12 possible once-unimaginable advances, such as self-driving cars and growth of the ‘Internet of
 13 Things,’” i.e., the rapidly expanding collection of devices that collect, transmit and share data
 14 via the internet. 5G networks “will increasingly need to rely on network densification, [which
 15 entails] the deployment of far more numerous, smaller, lower-powered base stations or nodes
 16 that are much more densely spaced.” *United Keetoowah Band of Cherokee Indians in Okla. v.*
 17 *FCC*, 933 F.3d 728, 739 (D.C. Cir. 2019).

18 236. Cellular wireless services, including cellular phones and other forms of wireless
 19 data transmission, use pulsed and modulated radio frequency signals to transmit the data
 20 wirelessly. Wireless service in the United States has mostly depended on large “macro cell”
 21 towers to transmit cell signal. However, to provide sufficient bandwidth to support wirelessly
 22 interconnecting tens of billions more devices (*see, e.g.,* Sundeep Rangan, Theodore S.
 23 Rappaport & Elza Erkip, *Millimeter-Wave Cellular Wireless Networks: Potentials and*
 24 *Challenges*, PROCEEDINGS OF THE IEEE | Vol. 102, No. 3, March 2014,
 25 <https://ecfsapi.fcc.gov/file/60001013329.pdf>), companies offering the next generation of
 26 wireless service — known as 5G — are in the process of adding hundreds of thousands of
 27 densely-spaced, wireless facilities, or “small cells.” *United Keetoowah Band of Cherokee*
 28 *Indians in Okla. v. FCC*, 933 F.3d at 732. These “small cell” antennas are largely being

1 deployed in the public rights-of-way, on utility poles and lamp posts sometimes only a few feet
2 from homes and children's bedrooms. Although small cells may use less power than big cell
3 towers, because of their proximity, the radiation exposure may be exponentially greater.

4 237. The evolution of cellular phone technology is represented by "Generations"
5 ("G"), from 1G to 4G. 5G is different. It is not only cellular phone networks, but it describes a
6 broader wireless infrastructure that will support the "Internet of Things," driverless cars,
7 "smart cities," and other technologies that may not yet be in existence. *See, e.g., Remarks of*
8 *Chairman Wheeler on The Future of Wireless*, FEDERAL COMMUNICATIONS COMMISSION (Jun.
9 20, 2016), <https://www.fcc.gov/document/remarks-chairman-wheeler-future-wireless>. It is also
10 used to provide internet services and thereby can displace existing wired internet services such
11 as cable-internet.

12 238. 5G cellular networks operate in the same group of RF frequencies used for
13 current wireless technologies. For example, currently, it is using low band frequencies around
14 600 MHz and mid band frequencies between 2.5-4.2 GHz. However, the increased bandwidth
15 and speed for 5G is achieved partly by using higher RF frequencies (currently, between 24-47
16 GHz), known as "millimeter wave" frequencies. 5G, WIKIPEDIA,
17 <https://en.wikipedia.org/wiki/5G> (last visited Aug. 14, 2020). Wireless technology uses RF
18 signals to carry data ("carrier wave"). The data is encoded on the carrier RF wave by pulsing
19 and modulating the RF signal. The scientific evidence shows that the pulsation and modulation
20 are biologically active. *See e.g., Igor Belyaev et al., 2012 Supplement, Evidence for Disruption*
21 *by Modulation*, BIOINITIATIVE.ORG (Sept. 2012), [https://bioinitiative.org/wp-](https://bioinitiative.org/wp-content/uploads/pdfs/sec15_2012_Evidence_Disruption_Modulation.pdf)
22 [content/uploads/pdfs/sec15_2012_Evidence_Disruption_Modulation.pdf](https://bioinitiative.org/wp-content/uploads/pdfs/sec15_2012_Evidence_Disruption_Modulation.pdf). 5G is also using
23 complex modulation schemes.

24 239. Well over a thousand studies illustrate the biological and potential risks of
25 exposure to non-thermal levels of pulsed and modulated radiofrequency radiation used for
26 wireless technology.

27 240. The BioInitiative Report is the most extensive review of the scientific evidence
28 of the biological and adverse health effects of RFs and electromagnetic fields (EMFs). It was

originally published in 2007. In 2012 an updated version was published, and it has been continuously updated ever since, most recently in 2020. The report is authored by the BioInitiative Working Group, comprised of 29 independent world-leading scientists and public health experts on RFs and EMFs. The report aims to provide a “*Rationale for Biologically-based Public Exposure Standards for Electromagnetic Fields (Extremely Low Frequency and Radio Frequency)*.” BIOINITIATIVE.ORG, <https://bioinitiative.org/>. The BioInitiative concludes that “bio-effects can occur... from just minutes of exposure... Many of these bioeffects can reasonably be presumed to result in adverse health effects if the exposures are prolonged or chronic.”

241. The BioInitiative’s recommended levels of exposure are based on “observed effects” found in humans in epidemiological studies. They are based on actual adverse effects observed in individuals living near cell towers and therefore highly relevant to the exposure from the “small cells” used for the 5G infrastructure. The recommended levels are well below the existing FCC guidelines. Furthermore, the BioInitiative recommends adopting guidelines that take into consideration the effects of pulsation and modulations.

242. Since 5G is using the same group of RF frequencies, as well as pulsed and modulated signals, the existing body of science regarding the biological and health effects of current RF-based technologies is relevant to 5G. Furthermore, there is a growing body of evidence regarding the biological and adverse effects of millimeter waves. Effects shown include arrhythmias, heart rate variability, bacterial effects, antibiotic resistance, immune system effects, altered gene expression and cataracts. *See, e.g.,* Cindy L. Russell, *5G wireless telecommunications expansion: Public health and environmental implications*, ENVIRON RES. 2018 Aug;165:484-495. doi: 10.1016/j.envres.2018.01.016. Epub 2018 Apr 11. PMID: 29655646, <https://pubmed.ncbi.nlm.nih.gov/29655646/>.

243. There are specific concerns regarding the exposure of children to RF based wireless technology and radiation. The BioInitiative report reviewed over 200 studies showing profound neurological effects showing clear evidence of adverse effects from RF/EMF including effects during the prenatal period and childhood. Studies show that prenatal exposure

1 can permanently affect brain neuro-development, memory and behavior and can lead to
 2 ADHD. RF/EMF exposure can also cause headaches, ringing in the ears, heart palpitations,
 3 sleep problems, cognitive and memory problems and nose bleeds. Belyaev I, Dean A, Eger H,
 4 et al., *EUROPAEM EMF Guideline 2016 for the prevention, diagnosis and treatment of EMF-*
 5 *related health problems and illnesses*, REV. ENVIRON HEALTH. 2016, 31(3), 363-397,
 6 <https://pubmed.ncbi.nlm.nih.gov/27454111/>. Over 200 studies also establish Oxidative Stress
 7 as a causal mechanism of harm. The evidence of profound harms associated with exposure to
 8 RFs suggests that wireless technology may also contribute to the exponential increase in
 9 sickness in children referenced *supra*.

10 244. There is also strong evidence that RF radiation can cause cancer and DNA
 11 damage. In November 2018, the results of a \$30 million study conducted by the U.S. National
 12 Toxicology Program (NTP) were published. The study found “clear evidence” that exposure to
 13 pulsed and modulated cell phone RF radiation caused cancer in rats. *High Exposure to Radio*
 14 *Frequency Radiation Associated with Cancer in Male Rats*, NATIONAL INSTITUTE OF
 15 ENVIRONMENTAL HEALTH SCIENCES (Nov. 1, 2018),
 16 <https://www.niehs.nih.gov/news/newsroom/releases/2018/november1/index.cfm>. In November
 17 2019, the NTP published further results showing DNA damage. The NTP’s DNA findings
 18 confirm the results of dozens of other DNA studies.

19 245. The Ramazzini Institute in Italy replicated the key finding of the NTP using
 20 much weaker exposure levels to cell phone radiation over the life of the rats. Thus, the
 21 Ramazzini Institute study, a €6 million study, extended the results of the NTP study to far
 22 lower levels of radiation exposure, comparable to levels of radiation from cell towers and
 23 therefore relevant to 5G networks. Falcioni L, Bua L, Tibaldi E, et al., *Report of final results*
 24 *regarding brain and heart tumors in Sprague-Dawley rats exposed from prenatal life until*
 25 *natural death to mobile phone radiofrequency field representative of a 1.8 GHz GSM base*
 26 *station environmental emission*, ENVIRON RES. 2018; 165:496-503,
 27 <https://pubmed.ncbi.nlm.nih.gov/29530389/>; see also Joel M. Moskowitz, *We Have No Reason*
 28 *to Believe 5G Is Safe*, SCIENTIFIC AMERICAN (Oct. 17, 2019),

1 <https://blogs.scientificamerican.com/observations/we-have-no-reason-to-believe-5g-is-safe/>.

2 246. In 2011, the International Agency for Research on Cancer (IARC) of the WHO
 3 classified RF radiation including radiation from cell towers as a “possible” (2B) carcinogen in
 4 humans. In its 2013 Monograph, IARC stated that while there is epidemiological evidence of
 5 increased cancer risk in humans, more animal studies are needed for a higher classification.
 6 *Non-ionizing Radiation, Part 2: Radiofrequency Electromagnetic Fields, IARC Monographs*
 7 *on the Evaluation of Carcinogenic Risks to Humans Volume 102*, IARC Publications,
 8 INTERNATIONAL AGENCY FOR RESEARCH ON CANCER, WORLD HEALTH ORGANIZATION,
 9 <https://publications.iarc.fr/126>. The results of the NTP and Ramazzini studies provide the
 10 “missing link.” Scientists, including a retired NTP/NIEHS scientist who designed the NTP
 11 study, are calling for the reclassification of RF as at least a “probable” (2A) carcinogen, and
 12 some claim the evidence is sufficient for a 1A “human carcinogen.” *See, e.g.,* Ronald L.
 13 Melnick, *Commentary on the utility of the National Toxicology Program study on cell phone*
 14 *radiofrequency radiation data for assessing human health risks despite unfounded criticisms*
 15 *aimed at minimizing the findings of adverse health effects*, ENVIRON RES. 2019 Jan;168:1-6.
 16 doi: 10.1016/j.envres.2018.09.010. Epub 2018 Sep 20. PMID: 30243215,
 17 <https://pubmed.ncbi.nlm.nih.gov/30243215/>.

18 247. In 2012, Italy’s Supreme Court found that cell phones cause acoustic neuroma-
 19 type brain tumors. Acoustic Neuroma is a Schwannoma tumor, the same type of tumor found
 20 in the NTP study. Since then, courts in three additional cases reached the same conclusion.

21 248. In December 2017, the California Department of Public Health (“CDPH”)
 22 published guidelines in response to the available peer-reviewed scientific evidence that RFR
 23 may cause DNA damage, reproduction harms, cancer and learning disabilities in humans,
 24 among other effects. CDPH Director and State Public Health Officer Dr. Karen Smith stated
 25 that “although the science is still evolving, there are concerns among some public health
 26 professionals and members of the public regarding long-term, high use exposure to the energy
 27 emitted by cell phones.” *CDPH Issues Guidelines on How to Reduce Exposure to Radio*
 28 *Frequency Energy from Cell Phones*, Office of Public Affairs, CALIF. DEPT. OF PUBLIC

1 HEALTH (Dec. 13, 2017), <https://www.cdph.ca.gov/Programs/OPA/Pages/NR17-086.aspx>. *See*
 2 *also* Cal. Gov. Code § 659641.1, subd. (f) (exempting wireless facilities on fire department
 3 facilities from mandatory approval after some firefighters developed severe neurological
 4 injuries from cell towers located on their stations).

5 249. In 2014, the California Medical Association passed a resolution calling upon the
 6 FCC to update its health guidelines as the scientific evidence showing profound adverse effects
 7 from wireless technologies. *California Medical Association House of Delegates Resolution,*
 8 *Wireless Standards Reevaluation, 2014 Resolution 107*, CALIFORNIA MEDICAL ASSOCIATION
 9 (adopted Dec. 7, 2014), [https://ecfsapi.fcc.gov/file/1092989731923/30-Attachment%2030-](https://ecfsapi.fcc.gov/file/1092989731923/30-Attachment%2030-%20California%20Medical%20Association%20Resolution.pdf)
 10 [%20California%20Medical%20Association%20Resolution.pdf](https://ecfsapi.fcc.gov/file/1092989731923/30-Attachment%2030-%20California%20Medical%20Association%20Resolution.pdf).

11 250. In 2015, over 200 scientists from 42 countries, who collectively published over
 12 2,000 papers, reviews, commentaries, and letters in professional journals on different types of
 13 non-ionizing EMF, sent the “International EMF Scientist Appeal” letter to the United Nations
 14 and WHO, stating: “Based upon peer reviewed, published research, we have serious concerns
 15 regarding the ubiquitous and increasing exposure to ... wireless devices.” *Scientists call for*
 16 *Protection from Non-ionizing Electromagnetic Field Exposure*, EMF SCIENTIST,
 17 <https://www.emfscientist.org/index.php/emf-scientist-appeal> (last visited Aug. 14, 2020).

18 251. The 5G Appeal was prepared in 2017 by scientists and doctors who called on the
 19 European Union (“EU”) to impose a moratorium on the roll out of 5G due to serious potential
 20 health effects from 5G technology. They expressed their “serious concerns” regarding the
 21 ubiquitous and increasing exposure to EMF generated by electric and wireless devices already
 22 before the additional 5G roll-out. As of August 27, 2020, 403 scientists and medical doctors
 23 have signed the 5G Appeal. *The Signatories*, 5G APPEAL, [http://www.5gappeal.eu/signatories-](http://www.5gappeal.eu/signatories-to-scientists-5g-appeal/)
 24 [to-scientists-5g-appeal/](http://www.5gappeal.eu/signatories-to-scientists-5g-appeal/). The 5G Appeal urges the EU to “take all reasonable measures to halt
 25 the 5G RF-EMF [“radio frequency-electromagnetic fields”] expansion until independent
 26 scientists can assure that 5G and the total radiation levels caused by RF-EMF (5G together
 27 with 2G, 3G, 4G, and WiFi) will not be harmful for EU citizens, especially infants, children
 28 and pregnant women, as well as the environment.”

252. The 5G Appeal states that “RF-EMF has been proven to be harmful for humans and the environment.” Quoting the *EMF Scientist*, it asserts “numerous recent scientific publications have shown that EMF affects living organisms at levels well below most international and national guidelines”. Effects include increased cancer risk; cellular stress, increase in harmful free radicals, genetic damage, structural and functional changes of the reproductive system, learning and memory deficits, neurological disorders, and negative impacts on the general well-being in humans. Damage goes well beyond the human race, as there is growing evidence of harmful effects to both plant and animal life.” *International Appeal: Scientists call for Protection from Non-ionizing Electromagnetic Field Exposure*, EMFSCIENTIST.ORG, <https://emfscientist.org/index.php/emf-scientist-appeal>.

253. The 5G Appeal concludes that an epidemic of sickness from this radiation already exists and “*inaction is a cost to society and is not an option anymore.*” *About, 5G APPEAL*, <http://www.5gappeal.eu/about/> (last visited Aug. 14, 2020) (emphasis added).

F. Facebook’s Adverse Motives.

1. Zuckerberg’s Personal Involvement and Biases.

254. It is highly probable that Zuckerberg has participated in, and personally directed “vaccine misinformation” policy decisions at Facebook which directly harmed CHD. It is also highly probable that Zuckerberg is directly involved with, and directing the philosophy of Facebook’s public health agency partnership strategy. The decision to demonetize advertising and donations for organizations like CHD related to “vaccine misinformation” is a decision that Zuckerberg would likely have known about, and approved, given his historical prominence in decisions related to content management generally, and vaccine “misinformation” specifically. As CEO of Facebook, Zuckerberg would have known about Facebook’s Preventive Health App, and most likely set the direction of its requirements in conjunction with public health agencies. Zuckerberg’s commentaries on public health/Facebook collaborations, and his direct involvement in related efforts such as CZI’s for-profit vaccine development, strongly suggest that he has exercised direct personal supervision and control of Facebook’s corporate actions at issue here.

1 255. There is substantial evidence that Zuckerberg, acting in his position as Facebook
 2 CEO and controlling shareholder, is personally involved with and directs its editorial decisions
 3 and policies with respect to what sorts of posts are and are not censored. It is more than likely
 4 Zuckerberg was substantially involved in the setting of vaccine “misinformation” policies and
 5 algorithms which Facebook deployed against CHD.

6 256. CHD has been effective in spreading information that is threatening to
 7 Zuckerberg’s financial interests in pharmaceutical ad revenue, 5G network deployment, and
 8 vaccine development. Independent media sources have verified that CHD was, prior to
 9 censorship, one of the top sources of purportedly “anti-vaccine” ads on Facebook.

10 257. CHD started posting articles against 5G, the new telecom technology, in October,
 11 2019. Currently, CHD posts anti-5G content once every seven days. These posts include
 12 science-based claims that 5G may cause significant damage to human DNA, may cause cancer,
 13 and is being installed in order to carry out mass surveillance. CHD and RFK, Jr.’s 5G-related
 14 posts have garnered more than 400,000 likes or other interactions.

15 258. Similarly, RFK, Jr. and CHD only posted about Bill Gates twice prior to
 16 December, 2019, but since then have mentioned Mr. Gates about once every five days. CHD’s
 17 highest-ever performing post was about Mr. Gates, and was flagged by Poynter/PolitiFact as
 18 false: It claimed that the Gates Foundation paralyzed 496,000 children in India when it tested a
 19 polio vaccine. He has also accused Mr. Gates of profiting from the pandemic, of wanting to
 20 “genetically modify” humanity, and of controlling not only the WHO, but also “the flow of
 21 global information.” So far, RFK, Jr., and CHD’s posts about Mr. Gates have achieved more
 22 than one million likes, shares and clicks. Alexi Mostrous, *How a Kennedy became a*
 23 *‘superspreader’ of hoaxes on COVID-19, vaccines, 5G and more*, THE GLOBE AND MAIL
 24 (Sept. 16, 2020), [https://www.theglobeandmail.com/world/article-robert-f-kennedy-jr-medical-](https://www.theglobeandmail.com/world/article-robert-f-kennedy-jr-medical-misinformation/)
 25 [misinformation/](https://www.theglobeandmail.com/world/article-robert-f-kennedy-jr-medical-misinformation/). Given Zuckerberg’s close involvement and CHD’s prominence in these
 26 issues, it is quite likely that Zuckerberg was personally aware of CHD and RFK, Jr.’s work.

27 259. Zuckerberg’s goal is to reduce anti-vaccine “sentiment” in the populace
 28 generally, in which Facebook’s vaccine “misinformation” campaign plays a significant part.

1 He is less concerned with finding scientific truth than the pursuit of an ideology of universal
 2 vaccination. Given Zuckerberg's ideology and his position as CEO, Facebook policy cannot
 3 but mold itself to his whims. Thus, the modus operandi which Zuckerberg set in motion was to
 4 identify *any* information critical of vaccines in any way, and then attempt to see if "fact-
 5 checking" could be done on it. Facebook said that a variety of human "fact-checkers" and
 6 machine learning was used to do so.

7 260. Zuckerberg has publicly stated his ideological belief in vaccinations numerous
 8 times. He has said, for example, that "[v]accination is an important and timely topic. The
 9 science is completely clear: vaccinations work and are important for the health of everyone in
 10 our community." Phil Plait, *Mark Zuckerberg: Pro-Vaxxer*, SLATE (Jan. 12, 2016),
 11 <https://slate.com/technology/2016/01/mark-zuckerberg-publicly-supports-vaccination.html>.

12 261. As alleged *supra*, Zuckerberg has donated at least \$25 million to the CDC
 13 Foundation.

14 262. At an October 22, 2019 U.S. House Committee on Financial Services hearing,
 15 Congressman Bill Posey (R-FL) had the following exchange with Zuckerberg, which revealed
 16 a strikingly unscientific view of the scientific method with respect to vaccines:

17 Representative Posey: I support vaccinations of children and adults,
 18 but I also support open and frank communication about the risks of
 19 vaccination. You testified that you believe in giving people a voice.
 20 Is Facebook able to assure us it will support users' fair and open
 21 discussions and communications about the risks as well as the
 22 benefits of vaccinations?

23 Mr. Zuckerberg: We do care deeply about giving people a voice
 24 and freedom of expression. At the same time, we hear consistently
 25 from our community that people want us to stop the spread of
 26 misinformation. So what we do is try to focus on misinformation
 27 that has the potential to lead to imminent or physical harm, and that
 28 can include especially misleading health advice.

Representative Posey: Are you 100% confident that vaccines pose
 no injury to any person on this planet?

1 Mr. Zuckerberg: *I don't think it would be possible for anyone to be*
 2 *100 percent confident but my understanding of the scientific*
 3 *consensus is that it's important that people get their vaccines.*

4 Representative Posey: Shouldn't somebody have the opportunity to
 5 express an opinion different from yours?

6 Mr. Zuckerberg: If someone wants to post anti-vaccination content
 7 or they want to join a group where people are discussing that, we
 8 don't stop them from doing that. But [...] we don't go out of our
 9 way to make sure our group recommendation systems show people
 10 or encourage people to join those groups. We discourage that.

11 *Facebook CEO Testimony Before House Financial Services Committee* [Video], C-SPAN (Oct.
 12 23, 2019), [https://www.c-span.org/video/?465293-1/facebook-ceo-testimony-house-financial-](https://www.c-span.org/video/?465293-1/facebook-ceo-testimony-house-financial-services-committee)
 13 [services-committee](https://www.c-span.org/video/?465293-1/facebook-ceo-testimony-house-financial-services-committee) (emphasis added).

14 263. Yet, by contrast, when it comes to “political speech,” Zuckerberg claims to be a
 15 First Amendment absolutist. In a May 27, 2020 interview with Fox TV News anchor Dana
 16 Perino, Zuckerberg rebuked Twitter for its decision to tag two of President Donald Trump’s
 17 tweets about mail-in voting with fact-check links. Zuckerberg said, *“I just believe strongly that*
 18 *Facebook shouldn't be the arbiter of truth of everything that people say online. Private*
 19 *companies probably shouldn't be, especially these platform companies, shouldn't be in the*
 20 *position of doing that.”* Rachel Sandler, *Zuckerberg Criticizes Twitter For Fact-Checking*
 21 *Trump Tweets*, FORBES (May 27, 2020), [https://www.forbes.com/sites/rachelsandler/](https://www.forbes.com/sites/rachelsandler/2020/05/27/zuckerberg-criticizes-twitter-for-fact-checking-trump-tweets/#2aec97616f7a)
 22 [2020/05/27/zuckerberg-criticizes-twitter-for-fact-checking-trump-tweets/#2aec97616f7a](https://www.forbes.com/sites/rachelsandler/2020/05/27/zuckerberg-criticizes-twitter-for-fact-checking-trump-tweets/#2aec97616f7a)
 23 (emphasis added). This is a very significant admission by Facebook’s chairman even as he and
 24 his company purport to “arbitrate the truth” of open scientific controversies when doing so
 25 advances their business interests.

26 264. On June 2, 2020, Zuckerberg held a “town hall” with Facebook employees who
 27 believe the company should take action on a controversial post by President Trump that “when
 28 the looting begins, the shooting begins[,]” which many people interpreted as a call for violence
 in nationwide protests over the death of George Floyd. Twitter put a warning label over the
 tweet, flagging it as violent content that violated that company's policies, but the tweet was

1 being left up because it was newsworthy. Facebook declined to take any action on a similar
2 post on its site.

3 265. At the “town hall,” Zuckerberg defended his decision that the post did not
4 constitute a policy violation, as he “personally walked employees through different
5 interpretations of Trump's language.” Zuckerberg’s personal involvement in the decision is
6 “characteristic of the way he has handled controversial policy choices over the last several
7 years[.] [. . .] His leadership style contrasts with Twitter CEO Jack Dorsey, who tends to
8 delegate policy decisions to his deputies. Zuckerberg also made the decision not to take down a
9 video of House Speaker Nancy Pelosi that was manipulated to make her appear drunk. He
10 made a personal call not to fact check political advertising, despite frustration from the public
11 and from employees, according to a person familiar with the decision-making.” Elizabeth
12 Dwoskin, *Zuckerberg defends decisions on Trump as Facebook employee unrest grows*,
13 WASHINGTON POST (Jun. 2, 2020), [https://www.sfgate.com/news/article/Zuckerberg-defends-](https://www.sfgate.com/news/article/Zuckerberg-defends-decisions-on-Trump-as-Facebook-15311764.php)
14 [decisions-on-Trump-as-Facebook-15311764.php](https://www.sfgate.com/news/article/Zuckerberg-defends-decisions-on-Trump-as-Facebook-15311764.php). Zuckerberg justified his decision not to act
15 against the President’s posts, citing his responsibility as the “leader of an institution committed
16 to free expression.” Donie O’Sullivan & Brian Fung, *Mark Zuckerberg tries to explain his*
17 *inaction on Trump posts to outraged staff*, CNN BUSINESS (Jun. 2, 2020),
18 <https://www.cnn.com/2020/06/02/tech/facebook-all-hands-trump/index.html>. Tellingly,
19 Zuckerberg’s professed commitment to “free expression” does not extend to truthful
20 communication about vaccine safety or 5G network health risks.

21 266. On an October 28, 2020, U.S. Senate Commerce Committee Hearing,
22 Zuckerberg testified to his belief that free speech is an “equity” that should be weighed against
23 other considerations, not a foundational freedom. Sen. Marsha Blackburn (R-TN) said in
24 introducing her question that Facebook is “picking winners and losers,” and that the company
25 is “inserting itself” into issues of free speech. “Is the First Amendment a given right, or is that
26 a competing equity?” she asked, referencing Zuckerberg’s earlier commentary.

27 267. “I believe strongly in free expression,” Zuckerberg replied. “But I do think that,
28 like all equities, it is balanced against other equities, like safety and privacy. Even people who

1 believe in the strongest possible interpretation of the First Amendment still believe there
 2 should be some limits on speech when it could cause an imminent risk of physical harm.”
 3 Rudy Takala, *Mark Zuckerberg Says Facebook ‘Balances’ First Amendment Against ‘Other*
 4 *Equities’*: ‘*There Should be Some Limits on Speech*,’ MEDIAITE (Oct. 28, 2020),
 5 [https://www.mediaite.com/news/mark-zuckerberg-says-facebook-balances-first-amendment-](https://www.mediaite.com/news/mark-zuckerberg-says-facebook-balances-first-amendment-against-other-equities-there-should-be-some-limits-on-speech/)
 6 [against-other-equities-there-should-be-some-limits-on-speech/](https://www.mediaite.com/news/mark-zuckerberg-says-facebook-balances-first-amendment-against-other-equities-there-should-be-some-limits-on-speech/).

7 **2. Vaccine-Maker Ad Revenue.**

8 268. Facebook earns revenue primarily through the sale of targeted advertising that
 9 appears on members’ Facebook pages. *See, e.g., Fraley v. Facebook*, 830 F. Supp. 2d 785, 791
 10 (N.D. Cal. 2011). Facebook generates 98 percent of its revenue through ads. It netted \$17.4
 11 billion from advertising in its most recent quarter. Tiffany Hsu & Cecilia Kang, “*Morally*
 12 *Impossible*”: *Some Advertisers Take a Timeout From Facebook*, NEW YORK TIMES (Jun. 9,
 13 2020), [https://www.nytimes.com/2020/06/09/business/media/facebook-advertisers-trump-](https://www.nytimes.com/2020/06/09/business/media/facebook-advertisers-trump-zuckerberg.html?searchResultPosition=2)
 14 [zuckerberg.html?searchResultPosition=2](https://www.nytimes.com/2020/06/09/business/media/facebook-advertisers-trump-zuckerberg.html?searchResultPosition=2).

15 269. Beginning as early as 2016, Facebook initiated programs to capture an ever
 16 greater share of the pharmaceutical direct-to-consumer advertising market. That year,
 17 Facebook unveiled a new feature enabling pharmaceutical companies to comply with
 18 regulatory restrictions on advertising by showing “important safety information,” or ISI, in a
 19 scrolling section featured below the ad. Beth Snyder Bulik, *Bayer blazes new trails for pharma*
 20 *with Betaseron Facebook ad*, FIERCEPHARMA (Oct. 30, 2016),
 21 [https://www.fiercepharma.com/marketing/bayer-s-first-facebook-ad-campaign-features-first-](https://www.fiercepharma.com/marketing/bayer-s-first-facebook-ad-campaign-features-first-scrolling-isi-a-pharma-ad-facebook-ad)
 22 [scrolling-isi-a-pharma-ad-facebook-ad](https://www.fiercepharma.com/marketing/bayer-s-first-facebook-ad-campaign-features-first-scrolling-isi-a-pharma-ad-facebook-ad). That feature has paid off hugely for Facebook.

23 270. In a Washington Post article entitled *Facebook has a prescription: More*
 24 *pharmaceutical ads* dated March 3, 2020, journalist Natasha Tiku wrote:

25 After years of avoiding social media, drug companies are growing
 26 bolder about advertising on Facebook and other social networks,
 27 according to interviews with advertising executives, marketers,
 28 health-care privacy researchers and patient advocates. That is
 exposing loopholes around the way data can be used to show
 consumers relevant ads about their personal health, even as both

1 social networks and pharmaceutical manufacturers disavow
2 targeting ads to people based on their medical conditions.

3 Ads promoting prescription drugs are popping up on Facebook for
4 depression, HIV and cancer. Spending on Facebook mobile ads
5 alone by pharmaceutical and health-care brands reached nearly a
6 billion dollars in 2019, nearly tripling over two years, according to
7 Pathmatics, an advertising analytics company. Facebook offers
8 tools to help drug companies stay compliant with rules about
9 disclosing safety information or reporting side effects.

10 But seeing an ad for a drug designed to treat a person's particular
11 health condition in the relatively intimate setting of a social media
12 feed — amid pictures of friends and links to news articles — can
13 feel more intrusive than elsewhere online. The same opaque
14 Facebook systems that help place an ad for a political campaign or
15 a new shoe in a user's feed also can be used by pharmaceutical
16 companies, allowing them to target consumers who match certain
17 characteristics or had visited a particular website in the past.

18 [...]

19 The growing concern about targeted pharmaceutical ads is
20 unfolding against an expansion at Facebook focusing more
21 generally on health — including encouraging more groups, where
22 community members gather to discuss certain topics, like the one
23 Downing moderates. It's also been actively soliciting more health-
24 care-focused ads.

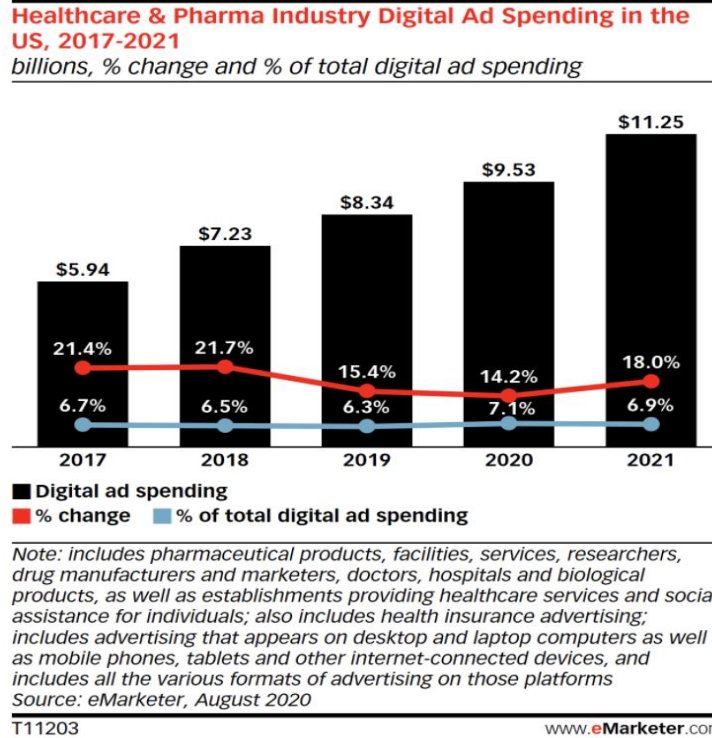
25 [...]

26 Pfizer, Allergan, Merck and GlaxoSmithKline were among the top
27 10 spenders on Facebook mobile ads in 2019, along with fast-
28 growing health start-ups such as SmileDirectClub and Roman,
according to Pathmatics.

29 Natasha Tiku, *Facebook has a prescription: More pharmaceutical ads*, WASHINGTON POST
30 (Mar. 3, 2020), <https://www.washingtonpost.com/technology/2020/03/03/facebook-pharma-ads/>.

31 271. “While healthcare and pharma digital ad spending has grown faster in previous
32 years, its 2020 growth is substantial, as the total US digital ad market is expected to grow by

only 1.7%.” Blake Droesch, US Healthcare and Pharma Is Among the Fastest-Growing Digital Ad Spenders, eMarketer (Oct. 9, 2020), <https://www.emarketer.com/content/us-healthcare-pharma-digital-ad-spending-outlook>.



272.

	IMS Health Social Media Engagement Index	Score
1	Johnson & Johnson	70
2	GlaxoSmithKline	25
3	Novo Nordisk	23
4	Pfizer	20
5	Novartis	18
6	Boehringer Ingelheim	18
7	Bayer	16
8	Merck & Co	13
9	AstraZeneca	10
10	UCB	9

273.

274. As alleged *supra*, Merck & Co., Pfizer, and GlaxoSmithKline are three of the four pharmaceutical manufacturers (Sanofi is the other) which control the United States

1 vaccine market. Facebook and Zuckerberg personally have a substantial adverse motive to
 2 protect the brands and goodwill of their largest pharmaceutical advertising buyers from
 3 criticism, however legitimate and well-founded, at the hands of CHD.

4 **3. Vaccine Development.**

5 275. In December 2015, Zuckerberg and his wife Dr. Priscilla Chan co-founded the
 6 Chan Zuckerberg Initiative, LLC, (“CZI”), a for-profit corporation, of which he is chairman,
 7 chief executive officer, and co-managing member, with a pledge to “donate” (i.e., transfer) 99
 8 percent of their Facebook shares, then valued at \$45 billion. CZI and CZ Biohub, its wholly-
 9 owned subsidiary, have set as their “moon shot mission” the goal “to cure all disease on the
 10 planet within the Facebook executive’s childrens’ lifetimes.” The CZI Infectious Disease
 11 Initiative seeks to develop new drugs, diagnostic tests and vaccines that could aid the fight
 12 against diseases like HIV, Ebola and newly emerging threats like Zika. *CZI Announces the*
 13 *Chan Zuckerberg Biohub*, CHAN ZUCKERBERG INITIATIVE (Sept. 23, 2016),
 14 <https://chanzuckerberg.com/newsroom/czi-announces-the-chan-zuckerberg-biohub/>. CZI
 15 purports that “[o]ur scientists and engineers will apply the most advanced technologies
 16 available today and work to invent new tools as well to support the global fight against
 17 infectious diseases. The work will be clustered around four key areas: diagnostic tests, new
 18 drugs, vaccines and rapid response.”

19 276. With respect to vaccines specifically, CZI’s online statement purports that:

20 We’re seeking new approaches to overcoming challenges that have
 21 stymied vaccine development for diseases like HIV/AIDS and
 22 tuberculosis. To push forward on vaccine development, we’ll use
 23 recent advances emerging from structural biology, machine
 24 learning and computer-assisted protein design to establish a new
 25 approach for creating vaccine candidates. And we’ll adopt
 “machine learning” strategies to develop powerful computer
 programs that can sort through large volumes of scientific data for
 insights.

26 We believe machine learning technology, now used for things like
 27 driverless car and threat assessments, could be particularly
 28 effective for probing clinical trial data for insights existing
 analytical methods fail to find.

1 *Infectious Disease Initiative*, CHAN ZUCKERBERG BIOHUB, [https://www.czbiohub.org/projects/](https://www.czbiohub.org/projects/infectious-disease/)
 2 infectious-disease/ (last visited Aug. 15, 2020).

3 277. In 2018, Zuckerberg purported to transfer 29 million of his Facebook shares,
 4 worth \$5.3 billion, to CZI. Overall, the CZ Biohub (CZB) is expected to receive a transfer of
 5 \$600 million over the course of ten years from Zuckerberg. The CZB provides \$50 million in
 6 funding for researchers based in the San Francisco area at UC Berkeley, Stanford University,
 7 and the University of California at San Francisco (UCSF). 750 researchers applied for the
 8 grants, and 47 were awarded cash grants of up to \$1.5 million, presumably in exchange for
 9 patent ownership transfers to CZB, and thereby to Zuckerberg as controlling co-owner and co-
 10 manager. *The Chan Zuckerberg Biohub: Seeking to Cure All Diseases*, BIOLEGEND BLOG,
 11 [https://www.biolegend.com/ja-jp/blog/the-chan-zuckerberg-biohub-seeking-to-cure-all-](https://www.biolegend.com/ja-jp/blog/the-chan-zuckerberg-biohub-seeking-to-cure-all-diseases)
 12 diseases (last visited Aug. 15, 2020).

13 **4. 5G Networks.**

14 278. Over the past five years, Facebook has made significant investments in
 15 developing 5G home systems, 60 GHz antenna infrastructure for cities (“Project Telegraph”),
 16 and 5G for rural areas (“Project Aries”), as well as satellites. Facebook purchased Inovi, a 5G
 17 company, which it used to build a trial 5G network in San Jose, California and on Facebook’s
 18 “campus” to test the viability and cost-effectiveness of 5G for mass deployment. Facebook also
 19 spearheaded the Telecom Infrastructure Project (“TIP”). By building a network of companies
 20 focused on 5G, Facebook seeks to harmonize the technical and standardization challenges of
 21 rolling out the 5G network. Bijan Khosravi, *Facebook's New Focus On 5G and Golden*
 22 *Opportunity for Entrepreneurs*, FORBES (Apr. 30, 2018), [https://www.forbes.com/sites/](https://www.forbes.com/sites/bijankhosravi/2018/04/30/todays-black-clouds-over-facebook-will-part-look-at-their-golden-ideas-in-5g/#37c15fdd313b)
 23 [bijankhosravi/2018/04/30/todays-black-clouds-over-facebook-will-part-look-at-their-golden-](https://www.forbes.com/sites/bijankhosravi/2018/04/30/todays-black-clouds-over-facebook-will-part-look-at-their-golden-ideas-in-5g/#37c15fdd313b)
 24 [ideas-in-5g/#37c15fdd313b](https://www.forbes.com/sites/bijankhosravi/2018/04/30/todays-black-clouds-over-facebook-will-part-look-at-their-golden-ideas-in-5g/#37c15fdd313b).

25 279. Facebook also collaborates with Common Networks, a United States company,
 26 to deliver ultra high-speed gigabit internet service to residential customers. Common Networks
 27 is using Facebook’s Terragraph technology, which employs high-frequency radio waves to
 28 speed up networks in locations with dense populations, as a replacement for standard home

1 broadband. Katie Collins, *Facebook and partners collaborate to bring 5G wireless internet to*
 2 *California homes*, CNET (Feb. 25, 2019), [https://www.cnet.com/news/facebook-brings-faster-](https://www.cnet.com/news/facebook-brings-faster-than-fiber-5g-wireless-connectivity-to-california/)
 3 [than-fiber-5g-wireless-connectivity-to-california/](https://www.cnet.com/news/facebook-brings-faster-than-fiber-5g-wireless-connectivity-to-california/).

4 280. Facebook's subsidiary PointView Tech has designed an internet satellite (called
 5 “Athena”) to provide broadband access to unserved and underserved areas throughout the
 6 world. Facebook’s designers intend that Athena will deliver data 10-times faster than SpaceX’s
 7 Starlink satellites. Mark Harris, *Facebook May Have Secret Plans to Build a Satellite-Based*
 8 *Internet*, IEEE (May 2, 2018), [https://spectrum.ieee.org/tech-talk/aerospace/satellites/facebook-](https://spectrum.ieee.org/tech-talk/aerospace/satellites/facebook-may-have-secret-plans-to-launch-a-internet-satellite)
 9 [may-have-secret-plans-to-launch-a-internet-satellite](https://spectrum.ieee.org/tech-talk/aerospace/satellites/facebook-may-have-secret-plans-to-launch-a-internet-satellite). To support this expansion, Facebook
 10 among other companies and governments have plans to launch collectively nearly 50,000
 11 satellites to provide 5G and Wi-Fi services everywhere on Earth. *See, e.g.,* Henry, C.,
 12 *Facebook willing to invest in satellite user equipment*, SPACE NEWS (March 8, 2017),
 13 <https://spacenews.com/facebook-willing-to-invest-in-satellite-user-equipment/>.

14 281. Facebook recently announced its plan to construct an undersea cable circling the
 15 African continent (“Project Simba”), to complement its transatlantic cable “Marea.” Facebook
 16 intends that this global wifi infrastructure will support its “Free Basics” project, which
 17 provides cheap internet services to the developing world. It currently operates in 63 countries.

18 282. The greater bandwidth and lower latency (delay) of 5G will allow Facebook to
 19 display more advertising content to its users at faster browsing speeds, generating ever more ad
 20 revenue for Facebook. It also stands to benefit financially from expanded global Internet access
 21 to its social media platform through expanding 5G networks. *See, e.g.,* Jessi Hempel, *Inside*
 22 *Facebook’s Ambitious Plan to Connect the Whole World*, WIRED (Jan. 19, 2016),
 23 <https://www.wired.com/2016/01/facebook-zuckerberg-internet-org/>.

24 283. Facebook also profits from expanded 5G networks, which can leverage other
 25 substantial investments it has made in new technologies. In 2014, Facebook acquired the
 26 virtual reality company Oculus for \$2 billion, and since then, Facebook has filed a number of
 27 related patents in the field of augmented reality technology (AR, VR, and home hardware
 28 products). *See, e.g.,* Christopher Yasejko & Sarah Frier, *Facebook’s Augmented Reality Push*

1 *Causes Leap in U.S. Patents*, BLOOMBERG (Jan. 14, 2020),
 2 [https://www.bloomberg.com/news/articles/2020-01-14/facebook-s-leap-in-u-s-patents-hints-at-](https://www.bloomberg.com/news/articles/2020-01-14/facebook-s-leap-in-u-s-patents-hints-at-eye-on-virtual-reality)
 3 [eye-on-virtual-reality](https://www.bloomberg.com/news/articles/2020-01-14/facebook-s-leap-in-u-s-patents-hints-at-eye-on-virtual-reality) (Zuckerberg opinion that “at some point in the 2020’s, we will get
 4 breakthrough augmented reality glasses that will redefine our relationship with technology”);
 5 Leo Sun, *Will Facebook Redefine Augmented Reality With Stella and Orion?*, MOTLEY FOOL
 6 (Sept. 20, 2019), [https://www.fool.com/investing/2019/09/20/will-facebook-redefine-](https://www.fool.com/investing/2019/09/20/will-facebook-redefine-augmented-reality-with-stel.aspx)
 7 [augmented-reality-with-stel.aspx](https://www.fool.com/investing/2019/09/20/will-facebook-redefine-augmented-reality-with-stel.aspx) (With respect to augmented reality, Facebook plans to
 8 manufacture “smartglasses” which it has ‘codenamed’ ‘Stella,’ set to launch between 2023 and
 9 2025, and a more advanced model it has ‘codenamed’ ‘Orion.’). The success of these AR and
 10 other products depends to a significant extent (if not entirely) on Facebook’s capacity to
 11 exploit 5G networks’ increased bandwidth and speed.

12 284. Additionally, Facebook has solidified its position as a leading developer of
 13 artificial intelligence (“AI”) technology. 5G helps enable both AI and drone technology. Tom
 14 Taulli, *Facebook AI (Artificial Intelligence): Will M&A Help?*, FORBES (Feb. 15, 2020),
 15 [https://www.forbes.com/sites/tomtaulli/2020/02/15/facebook-ai-artificial-intelligence-will-ma-](https://www.forbes.com/sites/tomtaulli/2020/02/15/facebook-ai-artificial-intelligence-will-help/#104eed427664)
 16 [help/#104eed427664](https://www.forbes.com/sites/tomtaulli/2020/02/15/facebook-ai-artificial-intelligence-will-help/#104eed427664). Facebook purportedly has also been developing solar-powered drone
 17 technology. Jon Russell, *Facebook is reportedly testing solar-powered internet drones again*
 18 *— this time with Airbus*, TECHCRUNCH (Jan. 21, 2019), [https://techcrunch.com/2019/01/21/](https://techcrunch.com/2019/01/21/facebook-airbus-solar-drones-internet-program/?guccounter=1)
 19 [facebook-airbus-solar-drones-internet-program/?guccounter=1](https://techcrunch.com/2019/01/21/facebook-airbus-solar-drones-internet-program/?guccounter=1).

20 285. Finally, Facebook stands to benefit from its investments in the “Internet of
 21 Things” infrastructure that depends on 5G. At present, roughly 8.4 billion ‘things’ make up this
 22 ‘universe,’ - from cars to appliances to wearable tech – which represents a 31% increase in the
 23 past four years. By the year 2025, that number may increase to 55 billion internet-enabled
 24 devices. *The Internet of Things will thrive on 5G technology*, VERIZON (Jun. 12, 2018),
 25 <https://www.verizon.com/about/our-company/5g/internet-things-will-thrive-5g-technology>.
 26 Facebook’s business plan contemplates widespread exploitation of 5G networks across the
 27 globe to drive its platform’s profitability.
 28

1 286. While Facebook has faced criticism from Rep. Schiff regarding vaccine
 2 “misinformation” and while there have been calls from public health institutions to address to
 3 vaccine “misinformation,” there have been little-to-no public calls regarding 5G. It would
 4 appear that censorship of CHD’s 5G-critical content is directly related to Facebook’s economic
 5 interests, quite possibly coming at the suggestion from Zuckerberg himself.

6 287. The 5G CHD material does not violate any community guidelines. *Community*
 7 *Standards, supra*, FACEBOOK, <https://www.facebook.com/communitystandards/>. Rather,
 8 Facebook and Zuckerberg have censored, flagged, and demoted CHD’s 5G-related posts in bad
 9 faith and for pretextual reasons to conceal their true motives in advancing 5G deployment
 10 globally, and suppressing any speech which increases 5G-“hesitancy,” here and abroad.

11 **G. No Affirmative Defense of CDA Section 230 Immunity.**

12 288. The Communications Decency Act (CDA) states: “No provider or user of an
 13 interactive computer shall be treated as the publisher or speaker of any information provided
 14 by another information content provider.” 47 U.S.C. § 230(c)(1). The affirmative defense of
 15 Section 230 immunity has been broadly construed as to information provided by third parties
 16 and hosted on Facebook. However, if an entity is “responsible, in whole or in part, for the
 17 creation or development of information” that forms the subject matter of the lawsuit, it is itself
 18 a content provider and is not protected. 47 U.S.C. § 230(f)(3).

19 289. In publishing its false “warning label” and “fact-checks,” Facebook has acted,
 20 and continues to act, both as an interactive computer service provider and as “content
 21 provider.” Section 230(f)(3) defines an information content provider as “any person or entity
 22 that is responsible, in whole or in part, for the creation or development of information provided
 23 through the Internet or any other interactive computer service.” Under Ninth Circuit law, as to
 24 content that a website service provider creates itself, or is responsible in whole or in part for
 25 creating or developing, the website is also a content provider. *Fair Housing Council v.*
 26 *Roommates.com, LLC*, 521 F.3d at 1162-63; *Fraley v. Facebook*, 830 F. Supp. 2d at 801-02.
 27 Under the CDA, 47 U.S.C. § 230(f)(3), Facebook’s warning label and its other affirmative
 28 content-development and creation far exceed “a publisher’s traditional editorial functions,”

1 *Batzel v. Smith*, 333 F.3d 1018, 1031 n.18 (9th Cir. 2003), and far exceed that content-creation
 2 of question-and-answer-sets which the Ninth Circuit found sufficient in the *Roommates.com*
 3 case. *See, e.g., Roommates.com*, 521 F.3d at 1163 (Congress did not seek to immunize “the
 4 creation of content.”) (emphasis added). Facebook has no immunity from liability for
 5 actionable harms arising from its fraudulent course of conduct.

6 290. 47 U.S.C. § 230(c)(2)(A) grants immunity from civil liability to an interactive
 7 computer service provider for “any action voluntarily taken *in good faith* to restrict access to or
 8 availability of material that the provider or user considers to be obscene, lewd, lascivious,
 9 filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material
 10 is constitutionally protected.” (Emphasis added). Here, Facebook’s application of fact-
 11 checking, demotion, and censorship against CHD are pretextual, and in truth are driven by
 12 Zuckerberg’s ulterior profit motives and ideological interests, and government pressure and
 13 benefits, rather than the vague catch-all for “otherwise objectionable” speech within
 14 Facebook’s community guidelines. For all the reasons alleged herein, Facebook and
 15 Zuckerberg have not acted in “good faith” with respect to CHD’s page, as required by 47
 16 U.S.C. § 230(c)(2)(A).

17 **H. Section 230 Immunity Plus Pressure Equals State Action.**

18 291. There are very cogent reasons in law and public policy why some kind of
 19 constitutional scrutiny must be triggered when legislators, through an immunity statute, such as
 20 the Communications Decency Act (“CDA”) deliberately seek to induce private conduct that
 21 would violate constitutional rights if state actors engaged in that conduct themselves.

22 292. The U.S. Supreme Court has found state action in two cases where an immunity
 23 statute (or its equivalent) was coupled with official pressure on a private actor to address a
 24 specific issue: *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602 (1989) and *Bantam Books,*
 25 *Inc. v. Sullivan*, 372 U.S. 58 (1963). In *Skinner*, the Supreme Court held that a federal agency
 26 regulation designed to induce private railroads to test their workers for drugs and alcohol
 27 subjected a subsequent search by a private railroad to Fourth Amendment protections. The
 28 regulation immunized the railroad from all state law liability, and the government had made

1 plain its strong preference for testing. Accordingly, “the Government’s encouragement,
2 endorsement, and participation” “suffice to implicate the Fourth Amendment.” *Skinner*, 489
3 U.S. at 615-616.

4 293. Just as the agency regulation in *Skinner* immunized from state law liability
5 railroads that administered specified tests, Section 230 immunizes from state law liability
6 platforms that censor “lewd, lascivious, filthy, excessively violent, harassing or otherwise
7 objectionable” material. Just as railway workers were not free to decline to submit to the tests,
8 so too CHD cannot decline to submit to Facebook censorship; in both cases, individuals who
9 refuse to comply can be excluded from service. And just as the government in *Skinner* had
10 made plain its “strong preference” for the testing, Section 230 and its legislative history make
11 plain the government’s strong preference for the removal of “offensive” content. Moreover, the
12 CDC, WHO, and Rep. Schiff have actively encouraged, endorsed, and participated in
13 Facebook’s conduct at issue here.

14 294. In *Bantam Books, supra*, the Supreme Court held that informal governmental
15 pressure and threats can turn private-party conduct into state action. *Bantam*, 372 U.S. at 68. In
16 *Bantam Books*, a private bookseller had stopped selling certain books after receiving a letter
17 from state commissioners listing those books as objectionable and suggesting that the
18 bookseller might be referred to local prosecutors if he continued selling them. The court found
19 “state action.” *Bantam*, 372 U.S. at 72. The conceptual “bottom-line” is this: When
20 governmental pressure is combined with a statutory provision like Section 230, the result must
21 be state action. Immunity plus pressure has to trigger the Constitution’s restraints. This case
22 offers a paradigm of how government immunity (Section 230) plus pressure (Rep. Schiff) and
23 benefits and various forms of collaboration (CDC/WHO), should turn Facebook and
24 Zuckerberg’s private-party conduct into state action.

25 **I. The May 28, 2020 Executive Order.**

26 295. On May 28, 2020, President Donald J. Trump issued an Executive Order on
27 Preventing Online Censorship. The Executive Order provides, in pertinent part:
28

1 *Sec. 2. Protections Against Online Censorship.* (a) [. . .] It is the
 2 policy of the United States to ensure that, to the maximum extent
 3 permissible under the law, this provision [47 U.S.C. § 230] is not
 4 distorted to provide liability protection for online platforms that —
 5 far from acting in “good faith” to remove objectionable content —
 6 instead engage in deceptive or pretextual actions (often contrary to
 7 their stated terms of service) to stifle viewpoints with which they
 8 disagree. [. . .] When an interactive computer service provider
 9 removes or restricts access to content and its actions do not meet
 10 the criteria of [47 U.S.C. § 230] subparagraph (c)(2)(A), it is
 engaged in editorial conduct. It is the policy of the United States
 that such a provider should properly lose the limited liability shield
 of subparagraph (c)(2)(A) and be exposed to liability like any
 traditional editor and publisher that is not an online provider.

11 *Executive Order on Preventing Online Censorship*, Executive Orders, THE WHITE HOUSE
 12 (May 28, 2020), [https://www.whitehouse.gov/presidential-actions/executive-order-preventing-](https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/)
 13 [online-censorship/](https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/).

14 296. The Executive Order’s free expression principles are consistent with this lawsuit,
 15 and its statement of the policy of the United States may be informative for the Court. But, as
 16 set forth, *supra*, the Court need not rely upon the Executive Order to adjudicate this
 17 controversy because CHD’s claims for relief are fully viable and warrant extraordinary relief
 18 under existing authorities.

19 **FIRST CAUSE OF ACTION**

20 **(FIRST AND FIFTH AMENDMENTS — BIVENS VIOLATIONS)**

21 **Defendants Facebook, Zuckerberg, Science Feedback, Poynter, and Does 1-20**

22 297. Paragraphs 1 through 252 are realleged and incorporated as if fully set forth
 23 herein.

24 298. Plaintiff seeks an implied private damages remedy against private defendants
 25 who act jointly or in concert with federal government agencies or actors to deny Plaintiff’s
 26 First Amendment speech and Fifth Amendment property rights. *Davis v. Passman*, 442 U.S.
 27 228 (1979) (implied damages remedy under Fifth Amendment Due Process Clause); *Bivens v.*
 28 *Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (Fourth

Amendment). The private cause of action is implied under 28 U.S.C. § 1331 to vindicate constitutional rights which would otherwise go unredressed. By analogy to 42 U.S.C. § 1983, Plaintiff must show both (1) the deprivation of a right secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under color of [federal] law. *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

299. The purpose of *Bivens* is to deter individual federal officers from committing constitutional violations, and the constitutional tort remedy against private entities is foreclosed only where claimant has other effective remedies. *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 71 (2001); cf. *Davis v. Passman*, 442 U.S. at 245 (“For Davis, as for *Bivens*, it is damages or nothing.”). Here, too, a private remedy should be implied because Plaintiff has no other recourse to right the wrongs of all defendants, corporate and individual.

300. The First Amendment protects Plaintiff’s rights of free speech and association. Under the First Amendment, Americans have the right to hear all sides of every issue and to make their own judgments about those issues without government interference or limitations. Content-based restrictions on speech are presumptively unconstitutional, and courts analyze such restrictions under strict scrutiny. It is axiomatic that public agencies such as the CDC and WHO could not themselves directly censor or issue a prior restraint upon Plaintiff’s online speech. See, e.g., *Freedman v. Maryland*, 380 U.S. 51, 59 (1965) (motion picture exhibition censoring panel could prohibit screening of films only if it assured exhibitor “that the censor will, within a specified brief period, either issue a license or go to court to restrain showing the film”); *Speiser v. Randall*, 357 U.S. 513, 526 (1958) (“Where the transcendent value of speech is involved, due process certainly requires . . . that the State bear the burden of persuasion to show that the appellants engaged in criminal speech.”). So, here, the judicial branch must affirm a bedrock principle of liberty that governmental agencies cannot legally “sub-contract” or “privatize” the role of public censor to Facebook as an end-run around the Constitution. Facebook’s actions, taken “under color of” federal law, *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 954 (9th Cir. 2008) (en banc), constitute a violation of Plaintiff’s constitutional free speech rights.

301. Defendants' deprivation of Plaintiff's federal rights is "fairly attributable" to the government, *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982), as it was taken with significant encouragement from, and in close consultation with, governmental agencies and actors. *Franklin v. Fox*, 312 F.3d 423, 444-45 (9th Cir. 2002). Ultimately, joint action exists when the government has "'so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity.'" *Gorenc v. Salt River Project Agric. Improvement & Power Dist.*, 869 F.2d 503, 507 (9th Cir. 1989) (emphases added). Defendants' misconduct is a far cry from "merely hosting speech by others." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1930 (2019); *Fed. Agency of News LLC v. Facebook, Inc.*, 432 F. Supp. 3d 1107, 1124-1126 (N.D. Cal. 2020) (supplying information to the State alone does not amount to state action).

302. Specifically, the corporate and individual defendants have acted in concert with Rep. Schiff, federal officials at the CDC and the CDC Foundation, and under the CDC's express consent, the WHO, a United Nations specialized agency, to deprive Plaintiff of its constitutional free expression rights. At all times relevant hereto, the United States was a member of the WHO. Under Article 71 of its Constitution, the WHO may only consult and cooperate with non-governmental national organizations *with the consent of the Government concerned*. *Basic Documents*, WORLD HEALTH ORGANIZATION, *supra*, https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=1 (emphasis added).

303. Facebook willfully participated in joint action with Rep. Schiff, CDC and CDC Foundation, and/or WHO officials or their agents to enforce CDC and WHO policies through Facebook's signature algorithms and machine learning to define, identify, label as "false news" and/or censor Plaintiff's speech with respect to vaccine-related speech. For *Bivens* purposes, the WHO must be recognized as a public entity, particularly when its charter requires official consent for its involvement with Facebook.

304. Rep. Schiff's February 14, 2019 public letter to Zuckerberg deployed the term "vaccine misinformation" as it has been used by the CDC and WHO, as a substantive standard by which to censor, flag, or demote any expression of skepticism toward government or

1 pharmaceutical industry pronouncements about vaccine safety or efficacy, regardless of its
 2 truth. Rep. Schiff also forcefully encouraged Facebook to refer users to “authoritative” sources
 3 of information, i.e., the CDC and/or WHO.

4 305. On March 7, 2019, with flagrant disregard for CHD’s nine-page letter rebuttal,
 5 Facebook publicly cited the CDC and WHO as *the* sources of Facebook’s initiative to identify
 6 and “take action against verifiable vaccine hoaxes,” including removing such content from its
 7 platform. Facebook also identified those governmental agencies as *the* sources of affirmative
 8 information which Facebook would instead provide to its members, by posting that content at
 9 the top of results for related searches, on pages discussing the topic, and on invitations to join
 10 groups about the topic. *Combatting Vaccine Misinformation*, FACEBOOK, *supra*,
 11 <https://about.fb.com/news/2019/03/combating-vaccine-misinformation/>. The same day that
 12 Facebook published its Warning Label on CHD’s page, the WHO publicly boasted that
 13 Facebook’s effort was the product of “*several months of discussion*” between the two. *Vaccine*
 14 *Misinformation: Statement by WHO Director-General on Facebook and Instagram*, *supra*,
 15 [https://www.who.int/news-room/detail/04-09-2019-vaccine-misinformation-statement-by-who-](https://www.who.int/news-room/detail/04-09-2019-vaccine-misinformation-statement-by-who-director-general-on-facebook-and-instagram)
 16 [director-general-on-facebook-and-instagram](https://www.who.int/news-room/detail/04-09-2019-vaccine-misinformation-statement-by-who-director-general-on-facebook-and-instagram) (emphasis added). Unlike *Fed. Agency of News*
 17 *LLC v. Facebook, Inc.*, 432 F. Supp. 3d at 1126, where no plausible “meeting of the minds”
 18 was alleged, Facebook’s consultation and joint action with the CDC and WHO predates and
 19 provides the template by which Facebook has injured Plaintiff, and strongly suggest extensive
 20 willing collaboration between them toward that end..

21 306. Moreover, defendants integrated CDC and WHO definitions of “vaccine hoax”
 22 into the algorithms and machine learning by which they have identified CHD’s content, which
 23 is often flagged merely because it is critical of those same agencies as “biased”, “unreliable”,
 24 and “out-of-date.” Science Feedback’s “fact-checker” responses merely cite to those flawed
 25 CDC studies of which Plaintiff is justly critical. Essentially, the government furnished critical
 26 information to Facebook, which Facebook then willfully used to effectuate its misinformation
 27 and agitprop scheme. Defendants’ behavior qualifies as “state action” under the joint action
 28 test due to their active cooperation and interdependence with the CDC and WHO. On the

1 public record, there is a “sufficiently close nexus” or symbiosis between the federal
 2 government and the challenged actions of defendants that the actions of the latter may be fairly
 3 treated as those of the government itself. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345,
 4 351 (1974). The CDC’s and WHO’s open and extensive coordination with Facebook shows
 5 “state action” in furtherance of an agreement between the government and a private party for
 6 purposes of Plaintiff’s *Bivens* claim.

7 307. Rep. Schiff also acted “under color of federal law” in issuing his pointed request
 8 to Facebook to censor and remove “vaccine misinformation” from its platform. Thus, Rep.
 9 Schiff’s conditional notice to remove Facebook’s Section 230 immunity also constitutes
 10 “significant encouragement, either overt or covert, that the [private actor’s] choice must in law
 11 be deemed to be that of the State.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

12 308. It is well-established that, as a general rule, the government “may not suppress
 13 lawful speech as the means to suppress unlawful speech.” *Ashcroft v. Free Speech Coalition*,
 14 535 U. S. 234, 255 (2002). Facebook has closely coordinated with government actors in the
 15 design of its aims, and the technical means by which Facebook applies public agency
 16 definitions and literature to accomplish their jointly-held goals: to identify, warn against,
 17 purportedly “rebut,” and censor so-called “vaccine hoax” speech. Facebook’s actions in
 18 censoring CHD’s protected speech amount to state action for purposes of the First
 19 Amendment. *See, e.g., Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir. 1983).

20 309. In the typical case raising a state action issue, a private party has taken the
 21 decisive step that caused the harm to the Plaintiff, and the question is whether the State was
 22 *sufficiently involved* to treat that decisive conduct as state action. *Nat’l Collegiate Athletic*
 23 *Ass’n. v. Tarkanian*, 488 U.S. 179, 192, 102 L. Ed. 2d 469, 109 S. Ct. 454 (1988). Beyond the
 24 public record cited *supra*, the missing pieces of official “involvement” are within the Facebook
 25 defendants’ possession, custody, and control. Plaintiff requires judicial process to obtain
 26 defendants’ records and recollections of the “who, what, when, where, why, and how” of
 27 Facebook’s collaboration with Rep. Schiff, the CDC and WHO, the CDC Foundation, and/or
 28 others under their supervision or control, to design, implement, and monitor Facebook’s

1 “vaccine misinformation” algorithm for identifying anti-CHD content, and/or to supervise or
2 monitor Facebook “fact-checkers” opposition articles.

3 310. Assessing whether conduct by Facebook and Zuckerberg constitutes action under
4 “color of law” is a “necessarily fact-bound inquiry,” addressed on a case-by-case basis. *Lugar*
5 *v. Edmondson Oil Co., Inc.*, 457 U.S. at 939; *see also Skinner v. Ry. Labor Execs.’ Assoc.*, 489
6 U.S. at 614 (holding that courts consider the totality of the circumstances to determine whether
7 conduct amounts to state action). There is no rigid formula for assessing whether there is a
8 sufficiently close nexus between the State and the challenged private conduct. “Only by sifting
9 facts and circumstances can the nonobvious involvement of the State in private conduct be
10 attributed its true significance.” *Burton v. Wilmington Parking Auth.*, 365 U.S. at 722.

11 311. Here, there are several overlapping features in the public record, which is the “tip
12 of the iceberg.” First, the CDA Section 230 immunity statute plus the “informal policy” of
13 coercion and encouragement by which Rep. Schiff, the WHO (with express consent of the
14 CDC), and the CDC itself induced Facebook’s censorship rises to the level of state action
15 under the *Skinner* and *Bantam Books* line of cases. Second, the CDC and CDC Foundation,
16 WHO, Facebook and Zuckerberg have formed a “symbiotic relationship” with one another,
17 from which the government benefits, and whose division of labor is that Facebook serves as
18 those public agencies’ “content manager” on its platform. In other nonobvious ways, those
19 government agencies and Facebook “somehow reached an understanding,” or quid pro quo, to
20 censor and demonetize CHD’s page. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152
21 (1970) (conspiracy between private restaurant and policeman to arrest plaintiff schoolteacher
22 following her sitdown strike). “The mere fact that [Facebook] might have been willing to act
23 without coercion makes no difference if the government did coerce.” *Carlin Communications*
24 *Inc. v. Mountain States Tel. & Tel. Co.*, 827 F.2d 1291, 1295 (9th Cir. 1987), *cert. denied*, 483
25 U.S. 1029 (1988).

26 312. Facebook and the other defendants violated Plaintiff’s First Amendment rights
27 by labeling CHD’s content “False Information,” and taking other steps effectively to censor or
28 block content from users. With a mix of these and other nonobvious forms of governmental

1 coercion and encouragement, Facebook took these actions against Plaintiff in an effort to
 2 silence and deter its free speech solely on account of their viewpoint. The case raises an urgent
 3 wrong that will go unredressed absent a judicial remedy fitted to the high stakes of speech
 4 suppression in a free society.

5 313. In addition, the Fifth Amendment provides that “[n]o person shall be . . .
 6 deprived of . . . property, without due process of law; nor shall private property be taken for
 7 public use, without just compensation.” U.S. CONST. amend. V. In May 2019, Facebook
 8 permanently disabled the “donate” button on CHD’s Facebook page, for and in which action
 9 Facebook received significant encouragement from the government. *Cf. Del's Big Saver Foods,*
 10 *Inc. v. Carpenter Cook, Inc.*, 795 F.2d 1344, 1346 (7th Cir. 1986) (“A state cannot avoid its
 11 obligations under the due process clause by delegating to private persons the authority to
 12 deprive people of their property without due process of law.”). And, as Rep. Schiff requested,
 13 Facebook also refused to carry CHD’s advertising of its fundraising campaigns.

14 314. Facebook misrepresented to CHD as its rationale that CHD had violated its
 15 fundraising terms. But, in actuality, Facebook took these punitive actions to squelch CHD’s
 16 viewpoint by cutting off its donations. Defendants’ actions amount to an unlawful deprivation
 17 or “taking” of Plaintiff’s property interests in its own fundraising functions.

18 315. “[T]he existence of a property interest is determined by reference to ‘existing
 19 rules or understandings that stem from an independent source such as state law.’” *Phillips v.*
 20 *Washington Legal Foundation*, 524 U.S. 156, 164 (1998) (*quoting Board of Regents of State*
 21 *Colleges v. Roth*, 408 U.S. 564, 577 (1972)). Certainly, by that measure, the funding button is a
 22 “thing of value” to CHD as its beneficial owner, and a valid property interest by means of
 23 which CHD raised \$41,241 in user donations from January to May 2019 alone. *See, e.g.,*
 24 *Boston Chamber of Commerce v. Boston*, 217 U.S. 189, 195 (1910) (Holmes, J.) (“the question
 25 is what has the owner lost, not what has the taker gained”). Indeed, it may be said that
 26 Facebook’s fundraising function is as much a lifeblood for CHD as it is for many other
 27 501(c)(3) organizations, and that the power to remove it at the government’s behest is the
 28 power to destroy these charitable organizations.

1 316. Facebook violated Plaintiff's Fifth Amendment rights by confiscating its
 2 fundraising functions under color of law without just compensation or due process. Facebook
 3 took these actions against CHD in order to snuff out CHD's ability to raise funds, solely on
 4 account of CHD's viewpoint. Defendants' removal of the donate button is conduct suggesting
 5 that CHD is unworthy of monetary contributions and, thus, the object of special opprobrium,
 6 all damaging to CHD's reputation and its ability to sustain itself. This represents another
 7 urgent wrong that will go unredressed absent a judicial remedy fitted to the high stakes of
 8 officially sponsored viewpoint-suppression in a free society.

9 317. Additionally, to establish a First Amendment retaliation claim, Plaintiff must
 10 show that: (1) it engaged in constitutionally protected activity; (2) the defendants' resulting
 11 actions would chill a person of ordinary firmness from continuing to engage in the protected
 12 activity; and, (3) the protected activity was a substantial or motivating factor in the defendants'
 13 conduct. *See Pinard v. Clatskanie Sch. Dist.* 6J, 467 F.3d 755, 770 (9th Cir. 2006); *Skoog v.*
 14 *County of Clackamas*, 469 F.3d 1221, 1235 (9th Cir. 2006) (plaintiff stated a claim for First
 15 Amendment retaliation by asserting that a police officer had obtained and executed a search
 16 warrant against him to punish him for filing a lawsuit against another police officer).

17 318. On August 17, 2020, CHD filed this action against Facebook and Zuckerberg.
 18 On or about August 31, 2020, CHD received notice that Facebook would modify the parties'
 19 contractual term of service § 3.2, effective October 1, 2020, to read: "We also can remove or
 20 restrict access to your content, services, or information if we determine that doing so is
 21 reasonably necessary to avoid or mitigate adverse legal or regulatory impacts to Facebook."

22 319. Essentially, the Facebook-CHD relationship has morphed over three stages:
 23 (1) the pre-2019 one in which Facebook did not interfere at all with CHD's truthful content;
 24 (2) the 2019 through August 17, 2020 one in which Facebook damaged CHD through flags,
 25 labels, and "fact-checks"; and (3) the post-August 17, 2020 one in which Facebook, still acting
 26 under "color of law," has damaged CHD in new and other ways by removing CHD's content or
 27 restricting accessing to the material to CHD principals. Section 3.2 purports to allow Facebook
 28 to do that simply to "avoid adverse legal or regulatory impacts to Facebook." And that is

1 precisely what Facebook has now done under its new § 3.2 in the ten weeks since the action
 2 was filed. This third paradigm states a clear case of retaliation by Facebook in the context of
 3 CHD's protected activity in filing this action, at least in part because the removal of this CHD
 4 content and the restriction of access to it, were not actions that Facebook deemed authorized
 5 under its prior terms.

6 320. Close proximity in time between a protected activity and an adverse action alone
 7 establish a prima face case of retaliatory causation. Facebook's use of its newly-amended § 3.2
 8 so close on the heels of CHD's lawsuit to demote or block CHD's previously "fact-checked"
 9 content is clear evidence that Facebook (in its role as a state actor) is also retaliating for CHD's
 10 protected conduct in filing the action.

11 321. Plaintiff needs process to ascertain the full extent to which Facebook has
 12 demoted or blocked its posts since the filing of this action, and that Facebook has taken these
 13 steps, also, under "color of law." So far as Plaintiff can establish, it appears that, since August
 14 17, 2020, Facebook has retaliated for CHD's protected activity by removing entirely at least
 15 six previously "fact-checked" CHD posts, which are no longer visible as of November 8, 2020
 16 at the latest: (1) Epoch Times CDC vaccines/autism article (factchecked on or about March 13,
 17 2020; (2) The Jewish Voice Luc Montagnier COVID article (fact-checked on or about April
 18 16, 2020, but no longer visible); (3) RFK, Jr. Merck/Gardasil presentation (fact-checked on or
 19 about May 15, 2020, but no longer visible); (4) Brian Hooker vaxxed/unvaxxed article (fact-
 20 checked on or about May 28, 2020, but no longer visible); (5) Decreased Infant Deaths (fact-
 21 checked on or about June 20, 2020, but no longer visible); and (6) RFK, Jr./Dershowitz Debate
 22 (posted on or about July 23, 2020, but no longer visible).

23 322. "[The plaintiff] must ultimately prove that [the defendant's] desire to cause the
 24 chilling effect was a but-for cause of [the defendant's] action." *Dietrich v. John Ascuaga's*
 25 *Nugget*, 548 F.3d 892, 900-01 (9th Cir. 2008) (citation omitted); *see also Vinatieri v. Mosley*,
 26 787 F. Supp. 2d 1022, 1033 (N.D. Cal. 2011) *aff'd*, 532 Fed. Appx. 762 (9th Cir. 2013).
 27 "Because direct evidence of retaliatory intent rarely can be pleaded in a complaint, allegation
 28 of a chronology of events from which retaliation can be inferred is sufficient to survive

dismissal.” *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012); *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995) (“timing can properly be considered as circumstantial evidence of retaliatory intent”). It is also significant that, despite having removed the purportedly “harmful” content, Facebook has not restored CHD’s fundraising tools. This suggests that CHD’s posts were pretextually fact-checked in order to justify demonetization in the first place.

SECOND CAUSE OF ACTION

(LANHAM ACT VIOLATIONS — 15 U.S.C. § 1125(A))

Defendants Facebook, Zuckerberg, Science Feedback, Poynter, and Does 1-20

323. Paragraphs 1 through 1272 are realleged and incorporated as if fully set forth herein.

324. The elements of a false promotion claim under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), are: (1) in an advertisement or promotion, defendants made false statements of fact about its own or another’s services; (2) the promotion actually deceived or has the tendency to deceive a substantial segment of their audience; (3) such deception is material, in that it is likely to influence the purchasing decision; (4) defendants caused their falsely promoted services to enter interstate commerce; and (5) Plaintiff has been or is likely to be injured as the result of the foregoing either by direct diversion of sales from themselves to defendants, or by lessening of the goodwill which its services enjoy with the buying public. *Rice v. Fox Broad Co.*, 33 F.3d 1170, 1180 (9th Cir. 2003). Facebook’s warning label and “fact-checks” on CHD’s page violate the Lanham Act in that these are (1) commercial speech; (2) by defendants who or whose privities are in commercial competition with Plaintiff; (3) for the purpose of influencing consumers to buy defendants’ goods or services, or to lessen the goodwill which CHD’s services enjoy with the contributing public; and (4) disseminated sufficiently to the relevant purchasing public to constitute “promotion” within that industry. *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 735 (9th Cir. 1999). Facebook and the individual defendants made, authored, and published the warning label and “fact-checks” on CHD’s page in order to deter Plaintiff’s followers and other consumers from

1 listening to, trusting, and relying on Plaintiff’s content, and donating or contributing to
 2 Plaintiff. By warning consumers instead to “go to CDC.gov” for “reliable and up-to-date
 3 [vaccine] information,” defendants intended to persuade consumers instead to follow the
 4 CDC’s recommendations to get the vaccines produced by its major advertisers, Merck, GSK,
 5 Sanofi, and Pfizer, who buy \$1 billion per annum in advertisements from Facebook.

6 325. The Lanham Act is not strictly limited to conduct that is unfair to a direct
 7 competitor, if defendant is affiliated with a competitor. Here, it suffices that Facebook is
 8 engaged in promoting competitive products through its pharmaceutical manufacturer
 9 advertisers, and competitive services through its affiliation with the CDC and WHO. *See, e.g.,*
 10 *Grasshopper House, LLC v. Clean & Sober Media LLC*, 394 F. Supp. 3d 1073 (C.D. Cal.
 11 2019) (finding liability where adverse reviewer was allied with competitor). Facebook’s
 12 intention to lessen the goodwill which CHD’s services enjoy is manifest from its false
 13 “warning label” and “fact-checks” and its disabling of CHD’s fundraising function and
 14 advertising. Plaintiff has suffered a competitive injury under the Lanham Act.

15 326. The false representations need not be made in a “classic advertising campaign,”
 16 but may consist instead of more informal types of “promotion.” *Coastal Abstract Serv., Inc. v.*
 17 *First Am. Title Ins. Co.*, 173 F.3d at 735. Facebook’s “warning label” and “fact-checks” are
 18 promotional in that these are all part of Facebook’s ongoing “vaccine misinformation” public
 19 relations campaign. *See, e.g., Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 77 (1983)
 20 (mailing of informational pamphlets by non-profit organization can be classified as
 21 commercial speech). Facebook’s “community initiatives” are promotional by definition
 22 because Facebook’s business model is, always and in all things, to manufacture users’ “trust”
 23 in Facebook – so Facebook can collect, manipulate, and market more of those trusting users’
 24 data. “Facebook’s business model [] rests on the need to keep consumers engaged in its
 25 services on the one hand and the need to monetize the data it gathers by targeting those users
 26 with new services and advertising on the other. [. . .] Over the long term, Facebook’s business
 27 model must evolve to center around trust, which means making user privacy and data security
 28

1 as important as monetization.” Adam Burt, *Can Facebook Ever Be Fixed?*, HARVARD
 2 BUSINESS REVIEW (April 8, 2019), <https://hbr.org/2019/04/can-facebook-ever-be-fixed>.

3 327. Facebook and CHD may reasonably be considered commercial competitors with
 4 respect to the messaging regarding vaccines and 5G that they promulgate to Facebook users.
 5 That Facebook views CHD as a competitor is demonstrated by its comprehensive, carefully
 6 planned and aggressive campaign to falsely label CHD’s website content, to marginalize and
 7 stigmatize CHD, and to subject it to severe commercial damage by cutting off CHD’s
 8 advertising and deactivating its funding button. CHD depends on donor funds for its survival.
 9 Facebook — possessing commercial power which most businesses do not have with respect to
 10 their competitors — has engaged in the ultimate form of unfair commercial competition by
 11 unilaterally cutting off a major source of CHD’s funding. This particular censorship technique
 12 is integrally linked with Facebook’s false warning labels and false “fact-checks” which
 13 mischaracterize CHD’s website content. All of these devices are part of Facebook’s false
 14 advertising campaign directed against CHD for the overarching purpose of stigmatizing CHD’s
 15 messages regarding vaccine transparency, oversight, and informed consent, diminishing
 16 CHD’s ability to reach viewers and to advertise, and ultimately rendering it unable to sustain
 17 itself financially. The methods are false advertising in combination with other forms of
 18 censorship; Facebook’s goal is the silencing of CHD, and, ultimately, its extinction.

19 328. Facebook has engaged in unfair competition through the false and misleading
 20 nature of the content it has posted concerning CHD’s content on its website concerning the
 21 potential dangers of vaccines and 5G. Facebook has conveyed to viewers that CHD’s content
 22 and information concerning these dangers is false. As discussed in some detail herein, CHD’s
 23 content is not false, and Facebook’s content labelling it as such is false and misleading in
 24 violation of the Lanham Act.

25 329. There are further aspects of Facebook’s warning labels affixed to CHD’s content
 26 that render them false and misleading. To the extent that Facebook has labelled some of CHD’s
 27 material as “Partly False,” this is inherently misleading. To label something as “partly false” is
 28 to concede that the material is also “partly true.” Misleadingly, Facebook’s “partly false” label,

1 which focuses only on the supposed falsity of CHD’s content, omits to specify the information
 2 that is true, does not distinguish between the true and allegedly false information, and does not
 3 attempt to indicate the relative proportion between the admittedly true information and the
 4 allegedly false content. Instead, the essential message conveyed by CHD’s warning labels is
 5 that all of CHD’s material is false. Facebook has treated as “false” even information that it
 6 implicitly concedes is true — and, like all of CHD’s content, even the concededly true content
 7 is subject to demotion by Facebook, prevented from obtaining advertising, and subject to
 8 Facebook’s blanket deactivation of CHD’s funding button. At the very least, Facebook’s
 9 deliberate failure to distinguish in its messaging between what it alleges is “false” or “partly
 10 false” in CHD’s posts and what it concedes is true reveals quite literally a reckless disregard
 11 for truth on Zuckerberg’s and Facebook’s part in their campaign against CHD.

12 330. Additionally, to the extent that CHD’s vaccine safety posts raise matters of open
 13 scientific dispute not susceptible of definite resolution or characterization as either “true” or
 14 “false, Facebook has misled users by conveying the impression that these issues are not, in
 15 fact, matters for open debate, that Facebook alone is capable of discerning “truth” in these
 16 matters, that its (and CDC’s and WHO’s) conclusions alone are true, and that CHD’s materials
 17 are not only false, but should not even be read or considered. Facebook’s touting of its use of
 18 “fact-checkers” underscores its misleading message that open or debatable scientific issues
 19 concerning vaccines and 5G are matters of resolved fact. It is not only the verbal content of
 20 Facebook’s messaging that conveys this message. Its demotion of CHD’s content, cutting off
 21 of CHD’s advertising and the deactivation of CHD’s funding mechanism collectively convey
 22 that CHD’s content does not merit the viewership and the financial support that, before
 23 Facebook’s censorship, flowed from such viewership. Facebook’s stance, and its false certainty
 24 regarding open scientific controversies, is contrary to historical experience, which is replete
 25 with complex scientific issues that are never definitively resolved, but may be subject to
 26 continuous scientific debate and reevaluation. Indeed, what appears at a given time to represent
 27 the scientific “consensus” or to reflect the weight of “accepted” scientific authority is all too
 28 often subject to reevaluation and ultimate reversal in favor of a revised and very different

1 “consensus.” Facebook’s essential message that the issues concerning the efficacy and safety
2 of vaccines are closed and settled is false and misleading. It has used this false message in an
3 illegal scheme to damage CHD commercially, and ultimately to attempt to destroy it.

4 331. The misleading nature of Facebook’s campaign against CHD has another
5 element: it fails in its messaging to disclose its own conflicts of financial interest that inform
6 and propel its false labelling of CHD’s content. Thus, Facebook’s warning labels against CHD
7 fail to warn users of Facebook’s and Zuckerberg’s own extensive forays in the Vaccine and 5G
8 industries, the vast extent of advertising on Facebook engaged in by major pharmaceutical
9 companies, or that such advertising has steadily increased each year since 2017. Nor is any
10 disclosure made to viewers concerning the pressure exerted by powerful politicians, prominent
11 among them Rep. Schiff, to have Facebook mount a campaign against alleged CHD
12 misinformation, or Facebook and Zuckerberg’s entanglements with the CDC, lest Facebook’s
13 CDA Section 230 immunity be jeopardized or lost — an immunity which Facebook considers
14 vital to its current business model.

15 332. Statements on websites are generally available to the public at large, and satisfy
16 the commercial speech requirement. In addition, defendants published the “warning label” and
17 “fact-checks” as part of its own promotional campaign to lobby government officials to
18 preserve its immunity under the CDA, and to persuade consumers that its content-management
19 process warrants their continued trust and patronage.

20 333. The “warning label” and “fact-check” deceptions are “material” in that these are
21 likely to lessen the goodwill that CHD’s services enjoy with the public and to influence
22 consumers’ vaccine purchasing decisions. *Cook, Perkiss, and Liehe, Inc. v. N. Cal. Collection*
23 *Serv.*, 911 F.2d 242, 244 (9th Cir. 1990). By affixing the “warning label” and “fact-checks” to
24 CHD’s Facebook page where these have been viewed hundreds of thousands of times since
25 September 4, 2019 by members of Facebook’s global community, defendants effectively
26 disseminated their false statements widely within the relevant purchasing public.

27 334. As alleged more specifically *infra*, on or about September 4, 2019 and
28 continuously since then, defendants Facebook and Zuckerberg have made, authored, and/or

published and circulated false and unprivileged statements about CHD in the form of Facebook’s Warning Label on CHD’s Facebook page. A warning label is, by definition, the disclosure of facts concerning dangers inherent in the use of a product or service. *Black’s Law Dictionary* 1421 (5th ed. 1979) (“The purpose of a ‘warning’ is to apprise a party of the existence of danger of which he is not aware to enable him to protect himself against it[.]”). Facebook has perverted the consumer-safety protection of a manufacturer’s “duty to warn” into a license to denigrate true speech where the truth conflicts with Facebook’s economic interests, business model, and/or relations with government, or Zuckerberg’s own perception of what is true or scientific fact.

335. Facebook’s warning label concerning CHD is false on its face and by clear implication. Defendants knew that their warning label was untrue and perpetuated it to divert users from CHD’s Facebook page to the CDC’s website. This was one of the tactics in defendants’ RICO fraud enterprise to damage CHD financially and marginalize it’s health advocacy work, and unjustly enrich themselves through their continued receipt of billions of dollars in pharmaceutical advertising revenue, and billions more in future vaccine and 5G network-related profits.

336. Defendants’ false statements have already harmed Plaintiff and likely will harm it in the future, especially within the large community of CHD followers, and among countless others who wish to be informed of true facts about vaccine safety risks. CHD’s Facebook page is both reliable and up-to-date, within the common meaning of those terms, as demonstrated by the specific content at issue here, and the internal processes by which CHD fact-checks and cite-checks all its posts, labels them unmistakably as articles or editorials, and updates content multiple times a week. Plaintiff has been seriously damaged as a direct and proximate cause of the falsity of the defendants’ warning label, in an amount to be determined at trial. The false statement attributes conduct, characteristics, and conditions incompatible with the proper exercise of Plaintiff’s trade and professional duties. The false statements were intended to hold Plaintiff up to hatred, distrust, contempt, aversion, ridicule, and disgrace in the minds of a substantial number in that community, and were calculated to harm, and have harmed their

1 business relationships and goodwill, and deterred others from associating or dealing with
 2 Plaintiff. Defendants' warning label constitutes egregious conduct constituting malice.
 3 Defendants' acts were willful and malicious. As such, in addition to compensatory damages
 4 and/or presumed damages, Plaintiff demands punitive damages relating to defendants' making
 5 of the above-referenced false statements and other willful misconduct, in an amount to be
 6 determined at trial.

7 337. California defamation law provides a reference point for establishing defendants'
 8 false promotion liability for willfully publishing its false "warning label" on Plaintiff's page:
 9 (1) defendants published the statements; (2) the statements were about Plaintiff; (3) they were
 10 false; and (4) defendants failed to use reasonable care to determine the truth or falsity. CAL.
 11 CIV. CODE § 45 (defining the tort of libel as a "writing" or "fixed representation," which
 12 exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be
 13 shunned or avoided, or *which has a tendency to injure him in his occupation*") (emphasis
 14 added); *Hecimovich v. Encinal Sch. Parent Teacher Org.*, 203 Cal. App. 4th 450, 470 (2012).
 15 Where Plaintiff is a public figure, the speech concerns a matter of public concern, *and*
 16 defendants are media publishers, then Plaintiff must prove that defendants acted with "actual
 17 malice." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 14 (1990). *Milkovich* left open the
 18 question whether, in the case of a non-media publisher defendant, Plaintiff must show only that
 19 defendants did not act with reasonable care "in checking on the truth or falsity of the
 20 information before publishing it." *Carney v. Santa Cruz Women Against Rape*, 221 Cal. App.
 21 3d 1009, 1016 (1990). By contrast, a public figure Plaintiff suing a media publisher defendant
 22 must prove that defendant acted with "actual malice," which requires a showing that a
 23 statement was made "with knowledge that it was false or with reckless disregard of whether it
 24 was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964) (the "*New York*
 25 *Times*" standard).

26 338. Under California law, defamation is "the intentional publication of a statement of
 27 fact which is false, unprivileged, and has a natural tendency to injure or which causes special
 28 damages." *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 27 (2007). Facebook and Zuckerberg

“published” their Warning Label on CHD’s Facebook page by inserting that “writing . . . or other fixed representation to the eye” in a place of prominence of the page where it appears every time a user opens the page, except where that user has previously seen it and deleted it. California recognizes two types of libel (CAL. CIV. CODE § 45a): libel per se, which is defamatory on its face, when read *in context*, and libel per quod, which a reasonable reader would be able to recognize only by knowledge of specific facts and circumstances *extrinsic* to the publication. Libel per se permits recovery of general damages, including reputational harm and punitive damages, while libel per quod requires proof of “special damages” which are defined narrowly to encompass only economic damages. CAL. CIV. CODE § 48a; *Gomes v. Fried*, 136 Cal. App. 3d 924, 939 (1982).

339. The Second Restatement of Torts defines the “context” of a statement to “include all parts of the communication that are ordinarily read with it.” RESTATEMENT (2D) OF TORTS § 563(d). For example, “the entire contents of a personal letter are considered as the context of any part of it because a recipient of the letter ordinarily reads the entire communication at one time.” *Id.*; *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (Ninth Circuit adopts the Second Restatement of Torts’ distinction between “context” and “extrinsic circumstance”). Defendants’ defamatory statement must be read and considered in the context of the other content of CHD’s Facebook page where it appears, and to which it refers expressly and by necessary implication.

340. Here, the context in which Facebook’s Warning Label on CHD’s page would ordinarily be seen and read includes: CHD’s own mission statement on that same page that vaccine safety should be taken away from the CDC; CHD’s message, “Read about CDC & WHO corrupt financial entanglements with vaccine industry, childrenshealthdefense.org/cdc-who”; and that context incorporates by reference numerous articles on CHD’s page which call out and criticize the CDC’s continued adherence to its “all vaccines for all children” policy. *See, e.g., CDC Corruption, Deceit, and Cover-Up; CDC’s Vaccine “Science”—A Decades Long Trail of Trickery; Why You Can’t Trust the CDC on Vaccines; CDC and WHO Corrupt Financial Entanglements with the Vaccine Industry; Dr. Brian Hooker’s Official Statement*

1 *Regarding Vaccine Whistleblower William Thompson; CDC & FDA Committee Members*
 2 *Have Financial Conflict of Interest with Vaccine Pharmaceuticals; OSC Calls for Further*
 3 *Review of Whistleblower Disclosures on Zika Testing; CDC Spider Letter; CDC: Off Center;*
 4 *Real-Life Data Show that the CDC Vaccine Schedule is Causing Harm; Don't Fall for the*
 5 *CDC's Outlandish Lies About Thimerosal; CDC and WHO Corrupt Financial Entanglements*
 6 *with the Vaccine Industry; CDC Lies About, and Media Repeats, Risk of Dying from Measles;*
 7 *CDC's 'Universal' Recommendations for Infant Hep B Vaccine Not Based on Science, But*
 8 *Assumptions; CDC's Infant Hep B Vaccine Recommendations—No Proof of Safety? See*
 9 *Children's Health Defense* page, FACEBOOK,
 10 <https://www.facebook.com/ChildrensHealthDefense> (last visited Aug. 15, 2020); *Knievel v.*
 11 *ESPN*, 393 F.3d at 1076-77 (considering surrounding web pages under the incorporation by
 12 reference doctrine). But, Plaintiff need not prove that the CDC is nefarious to make its point
 13 that the views of CHD are being unfairly misrepresented and censored, to the detriment of the
 14 public which deserves to be able to consider alternative views and make up its own mind.

15 341. **“This page posts about vaccines.”** Under California law, Plaintiff must show
 16 that the false statement was made “of and concerning” them, either by name or by “clear
 17 implication.” *Ferlauto v. Hamsher*, 74 Cal. App. 4th 1294, 1404 (1999). The specific reference
 18 requirement is clearly met here as to CHD as an organization — by the text of the first
 19 sentence (“*This page*”), by its large bolded font in the original, and, by its placement at the top
 20 of CHD’s Facebook page. Libel exists where the words used can be shown to have referred to
 21 Plaintiff, and to have been so understood. *Vedovi v. Watson & Taylor*, 104 Cal. App. 80, 83
 22 (1930).

23 342. **“When it comes to health, everyone wants reliable, up-to-date information.”**
 24 This sentence, read alone, is undoubtedly true. But, it tees up the falsity of the next sentence
 25 with which it should be read. “The publication in question [...] must be read as a whole in
 26 order to understand its import and the effect that it was calculated to have on the reader[.]”
 27 *Selleck v. Globe International, Inc.*, 166 Cal. App. 3d 1123, 1131 (1985). The court applies a
 28 “totality of the circumstances test” and “puts itself in place of an average reader [to] determine

1 the natural and probable effect of the statement.” *Bently Reserve LP v. Papaliolios*, 218 Cal.
2 App. 4th 418, 427-28 (2013).

3 343. Merriam-Webster’s Dictionary defines the adjective “reliable” as “suitable or fit
4 to be relied on; dependable.” *Reliable, Merriam-Webster.com*, [https://www.merriam-](https://www.merriam-webster.com/dictionary/reliable)
5 [webster.com/dictionary/reliable](https://www.merriam-webster.com/dictionary/reliable) (last visited Aug. 15, 2020). Merriam-Webster’s Thesaurus
6 lists synonyms for “reliable” to include “true, trustable, trusty, trustworthy, tried-and-true,
7 good, responsible, safe, secure, sure.” *Reliable, Merriam-Webster.com*, Thesaurus,
8 <https://www.merriam-webster.com/thesaurus/reliable> (last visited Aug. 15, 2020). Merriam-
9 Webster’s Dictionary defines the adjective “up-to-date” as “(1) extending up to the present
10 time; including the latest information. (2) abreast of the times; modern.” *Up-to-date, Merriam-*
11 [Webster.com](https://www.merriam-webster.com/dictionary/up-to-date), <https://www.merriam-webster.com/dictionary/up-to-date> (last visited Aug. 15,
12 2020). Merriam-Webster’s Thesaurus adds the definition “having information especially as a
13 result of study or experience,” and lists synonyms for “up-to-date” which include
14 “contemporary, current, modern, new, present-day, state-of-the-art, up-to-the-minute,
15 informed, knowledgeable, well-informed.” *Up-to-date, Merriam-Webster.com*, Thesaurus,
16 <https://www.merriam-webster.com/thesaurus/up-to-date> (last visited Aug. 15, 2020).

17 344. **“The Centers for Disease Control (CDC) has information that can help**
18 **answer questions you may have about vaccines.”** Read with the preceding “reliable, up-to-
19 date information” sentence to which it refers, and which together make its essential point, this
20 sentence is false, and provably so -- as CHD has devoted much of its organizational life to
21 showing. Read in context, the fair meaning of the sentence is to equate the word “information”
22 with “reliable and up-to-date information” in the preceding sentence. Any reasonable reader
23 would read the second “information” as shorthand for the first, and apply the “reliable, up-to-
24 date” modifiers to both. What else, if not the “reliable and up-to-date information,” which
25 Facebook says “everyone wants,” and which Facebook claims to be in a position to discern and
26 provide with respect to vaccines? By its terms of service and community standards
27 incorporated therewith, Facebook purports to be viewpoint-neutral except for limited instances
28 of speech, which poses an “imminent threat of harm or violence.” Facebook’s pretense of

1 neutrality only compounds the reputational harm of its libel to Plaintiff. *See Masson v. New*
 2 *Yorker Magazine, Inc.*, 501 U.S. 496, 513 (1991) (New Yorker article which purported to be
 3 non-fiction was actionable because it gave the reader no clue that fabricated quotations were
 4 being used other than to allow the subject to speak for himself, which made them all the more
 5 damning).

6 345. **“Go to CDC.gov.”** Once more, the bolded and larger font size underscore that
 7 Facebook has singled out Plaintiff’s Facebook page for negative comment. The very existence
 8 of Facebook’s Warning Label on CHD’s page, and its redirection link “Go to CDC.gov,” are
 9 well understood as a “black mark” on that page among Facebook’s community of 2 billion
 10 users worldwide. Facebook’s highly-sporadic and selective exercise of its content-regulation
 11 authority as community moderator underscores its audience’s reasonable expectation that, in
 12 this context, a Facebook warning label on a third party’s page conveys an objective fact, not an
 13 expression of Facebook’s opinion, or an undisclosed commercial interest and ambition. *See*
 14 *Knieve v. ESPN*, 393 F.3d at 1075 (analyzing the format, structure, the language used, and the
 15 expectations that the target audience would have with regard to the type of information that
 16 might be found in the context, and noting that such context might be “paramount,” if not
 17 “dispositive”). For any reasonable reader, the “gist” or “sting” of Facebook’s “warning label”
 18 misrepresentation is its unsubtle insinuation *as fact* that, in contrast with the CDC’s
 19 information, **“what you see below on CHD’s page is *not* reliable, up-to-date information.**
 20 **Rely on the CDC instead.”** That is the only reasonable interpretation of Facebook’s Warning
 21 Label in light of its specific wording, prominent placement on CHD’s page, and the context of
 22 the CHD-created content on that page which features CHD’s scathing factual exposé of the
 23 CDC.

24 346. Facebook’s warning label on CHD’s page states a classic imputation of CHD’s
 25 dishonesty in dealing with its users, and a lack of integrity about its trade in the sphere in
 26 which it operates. That is how third-party readers understand it and, as such, it is falsely
 27 disparaging under the Lanham Act. Defendants are liable for what is insinuated, as well as for
 28 what is stated explicitly. *MacLeod v. Tribune Publishing Co.*, 52 Cal. 2d 536, 547 (1959).

Further, the determinative question is whether the ‘gist or sting’ of the statement is true or false, benign or defamatory, in substance. *Ringler Associates, Inc. v. Maryland Casualty Co.*, 80 Cal. App. 4th 1165, 1182 (2000). A statement is deemed false if it “would have a different effect on the mind of the reader (or viewer) from that which the pleaded truth would have produced.” *Metabolife Int’l Inc. v. Wornick*, 264 F.3d 832, 849 (9th Cir. 2001) (quoting *Masson v. New Yorker Magazine, Inc.*, 501 U.S. at 517). Facebook’s warning label is “reasonably susceptible of an interpretation which implies a provably false assertion of fact,” *Couch v. San Juan Unified Sch. Dist.*, 33 Cal. App. 4th 1491 (1995); *Dodds v. Am. Broad. Co.*, 145 F.3d 1053, 1063-64 (9th Cir. 1998). Here, the conclusion that CHD’s vaccine-related information is “unreliable and out-of-date” is sufficiently factual to be verifiable as true or false, *Milkovich v. Lorain Journal Co.*, 497 U.S. at 19, and indeed, it is false. *See also Manufactured Home Communities, Inc. v. County of San Diego*, 544 F.3d 959, 964 (9th Cir. 2008) (defendant’s statements that accused Plaintiff of lying without expressly disclosing a factual basis for the statements could be defamatory).

347. An old, but instructive case is *Rosenberg v. J.C. Penney Co.*, 30 Cal. App. 2d 609 (1939). There, in 1924, the Rosenberg retail store sold the Healdsburg high school’s gym uniform, and a competitor across the street, the J.C. Penney Co. department store, wanted that business. So, a J.C. Penney manager created a window display that purported to compare samples of the respective stores’ gym shorts. The comparison included a placard with these comments: “Decide for Yourself. This Garment is either a poorly-made second or prison-made merchandise. Seams crooked. Slovenly made. Long Loose Stitches.” *Id.* at 613. On appeal, the California court affirmed that the window display placard was libelous per se because it was an imputation against the honesty and integrity of the merchant in the sale of its goods, and essentially accused it of fraud and deception, and unfair dealing with its customers. “The reputation of a tradesman in the sphere in which he earns his living is a valuable asset and is entitled to the protection of the law.” *Id.* at 620.

348. Now fast forward nearly a century, and recast that small town America window display libel by a giant and overreaching department store against its small cross-street rival to

1 today's world where the libel is propagated online by a comparable Goliath on a global scale.
 2 That is, essentially, what Facebook has done. Like J.C. Penney's window display, Facebook's
 3 warning label on CHD's page draws an invidious comparison between the quality of the
 4 health-related information offered by two rivals, the CDC and CHD, for the public's trust and
 5 attention. As alleged *infra*, Facebook has "skin in the game" because its controlling individual
 6 and his related entities are in the vaccine development business, competing with CHD's
 7 educational materials, emphasizing informed consent and safety. Like the Rosenberg retail
 8 store, the "business integrity of the company [CHD] is at stake." *Rosenberg v. J.C. Penney Co.*,
 9 30 Cal. App. 2d at 627.

10 349. Facebook's warning label implies a provably false assertion of fact, whether or
 11 not the words used are termed "fact" or "opinion." *Milkovich*, 497 U.S. at 18-19. The "gist" or
 12 "sting" of the disparagement — **that CHD's page conveys "unreliable and out-of-date**
 13 **information"** — is objectively false in light of the totality of the circumstances: CHD's page-
 14 content and the fact-checking process by which it creates and curates such content,
 15 distinguishes between known and unknown scientific facts, and labels expressions of opinion
 16 on its page as such. *See supra*. Certainly the pleaded truth — that CHD's page in fact contains
 17 "reliable and up-to-date information" while CDC's page does not — would produce an effect
 18 on the mind of the reader 180-degrees different than the effect produced by Facebook's
 19 warning label. *Masson*, 501 U.S. at 516-17. Third-party readers understood Facebook's
 20 warning label as Facebook intended, namely as a statement of fact that the information on
 21 CHD's Facebook page is neither reliable nor up-to-date. *See, e.g., Slaughter v. Friedman*, 32
 22 Cal.3d 149, 154 (1982) (accusations of "excessive" fees or "unnecessary" work by professional
 23 dental plan administrators carry a "ring of authenticity" and reasonably might be understood as
 24 being based on fact). Facebook has sought after, and must answer for, its own "ring of
 25 authenticity."

26 350. On March 4, 2019, in response to Representative Schiff's letter to Facebook,
 27 CHD sent Facebook a nine-page single-spaced letter providing CHD's detailed summary of the
 28 known and unknown scientific facts, and its most pressing concerns, with respect to vaccine

1 safety. See Exhibit A. Thus, Facebook was on notice that CHD was not promoting
2 “misinformation” of any sort.

3 351. Yet, just three days later, on March 7, 2019, Facebook announced in its online
4 press release that it would take steps to eliminate “vaccine misinformation” on Facebook by
5 reducing its distribution and providing people with “authoritative information” on the topic,
6 and then Facebook proceeded to falsely disparage CHD. *See, e.g., Masson*, 501 U.S. at 521
7 (unlike “hot news” journalist, defendant author had both time and practical ability to fact-check
8 tapes in her possession). Here, with CHD’s detailed presentation in hand, Facebook had
9 “obvious reasons to doubt the veracity” of its warning label, but instead engaged in
10 “purposeful avoidance of the truth.” *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968); *Harte-*
11 *Hanks Communication, Inc. v. Connaughton*, 491 U.S. 657. By reasonable inference, Facebook
12 conducted no investigation whatsoever to confirm or dispel the material facts in CHD’s March
13 4, 2019 letter, and Facebook intended to convey or, at the very least, endorsed the defamatory
14 false innuendo. *Newton v. National Broadcasting Co., Inc.*, 930 F.2d 662, 681 (9th Cir. 1990).
15 Facebook and Zuckerberg’s apparent failure to respond in writing to the March 4, 2019 letter,
16 much less to even attempt to refute the many points made in that letter (which was addressed to
17 Zuckerberg personally), reveals their reckless disregard for the truth in this matter, and that
18 their campaign against CHD was infected with legal malice. To the extent that there was a
19 failure to deliver the March 4 letter to Zuckerberg (although we are aware of no evidence that
20 he did not receive it), such a failure, and Facebook and Zuckerberg’s ultimate failure to
21 investigate the points raised in the letter and respond to them, also evinces a reckless disregard
22 for truth and underscores that Facebook and Zuckerberg’s conduct reflects the character of
23 legal malice.

24 352. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986) left open the
25 question whether non-media publisher defendants such as Facebook and Zuckerberg are
26 entitled to the same level of protection that media publisher defendants receive under the *New*
27 *York Times* standard. Either way, these defendants acted with the requisite mental state to be
28 liable for defamation measured by the “actual malice” standard that they subjectively doubted

1 the veracity of the statement or purposely avoided the truth, or by the negligence standard
 2 applicable to non-media defendants. *Dodds*, 145 F.3d at 1060; *St. Amant v. Thompson*, 390
 3 U.S. at 731 (stating test as whether defendant “in fact entertained serious doubts as to the truth
 4 of [his] publication”); *Garrison v. Louisiana*, 379 U.S. at 74 (whether defendant published the
 5 material while subjectively possessing a “high degree of awareness of the probable falsity of
 6 the publication”).

7 353. “Actual malice” can be shown by, *inter alia*, “subsequent defamations [and
 8 other] statements of defendants, circumstances indicating the existence of rivalry, ill will, or
 9 hostility between the parties, [and] facts tending to show a reckless disregard of the Plaintiffs’
 10 right[.]” *Herbert v. Lando*, 441 U.S. 153, 164 n.12 (1979) (*quoting* 50 Am. Jur. 2d, § 455), all
 11 of which are strongly present. In particular, defendants harbor an adverse motive to profit from
 12 their unfettered development of vaccines and 5G networks, in furtherance of which they have
 13 committed multiple other predicate acts of misrepresentation amounting to wire-fraud for
 14 purposes of RICO enterprise liability. And, crucially, they knew their published warning label
 15 was false or acted with reckless disregard to its falsity.

16 354. Zuckerberg’s public statements to TV audiences, to Congress, to his investors,
 17 and to Facebook users are replete with boasts that he works with government officials to
 18 identify and suppress “vaccine misinformation,” and to redirect users to the government’s
 19 authoritative “information,” and that his “understanding of the scientific consensus is that it’s
 20 important that people get their vaccines.” He has also publicly boasted of his “outside interests
 21 in health.” The three-day interval (March 4 to 7, 2019) from CHD’s nine-page letter to
 22 Facebook’s press release announcing its campaign suggests that Zuckerberg willfully chose not
 23 to test his “understanding” against actual facts, as brought to his attention by CHD.

24 355. Zuckerberg has personally authorized, directed and participated in Facebook’s
 25 campaign of false advertising and censorship directed against CHD and its website content.
 26 Zuckerberg holds, and has long held, a position of predominance at Facebook. He is the
 27 ultimate decision maker at the company. Zuckerberg is a co-founder of Facebook, Inc. and, at
 28 all times relevant to the claims set forth herein, has served and functioned as Facebook’s

1 Chairman, Chief Executive Officer, and controlling shareholder. According to the company's
 2 2018 Proxy Statement, Zuckerberg controls 53.3% of Facebook's total voting shares. He
 3 possesses the sole power to elect or remove any director from Facebook's Board.

4 356. Zuckerberg's personal involvement in directing the operations and setting and
 5 implementing the policies of Facebook has only increased over the years. As one report has
 6 noted: "[After the 2016 election] Mr. Zuckerberg resolved to take control of the global
 7 superpower in which he already dominated the voting. [In July 2018,] Mr. Zuckerberg called a
 8 meeting with his top lieutenants. ... Mr. Zuckerberg said he would be making more decisions
 9 on his own, based on his instincts and vision for the company. Mr. Zuckerberg also began to
 10 participate more directly in meetings that had previously been Ms. Sandberg's domain – from
 11 the nitty-gritty of taking down disinformation campaigns, to winding philosophical discussions
 12 on how Facebook ought to handle political ads. ... Other board disagreements, specifically
 13 around political advertising and the spread of misinformation, always ended with Mr.
 14 Zuckerberg's point of view winning out." Mike Isaac, Sheera Frenkel & Celia Kang, *Now*
 15 *More Than Ever, Facebook Is a 'Mark Zuckerberg Production, supra,'* NEW YORK TIMES,
 16 <https://www.nytimes.com/2020/05/16/technology/zuckerberg-facebook-coronavirus.html>
 17 (emphasis added).

18 357. As is well known, Zuckerberg is the public face of his company. He has testified
 19 many times before Congress, including with regard to Facebook's censorship policies
 20 generally and its approach to vaccine information posted by users in particular. He is well
 21 aware of the vaccine issue and is directly concerned with what he regards as Facebook's role in
 22 limiting the dissemination of material that he deems "misinformation." As Zuckerberg noted in
 23 response to a question from Representative Posey (R-FL) during a Congressional hearing
 24 conducted on October 22, 2019: "[W]e hear consistently from our community that people want
 25 us to stop the spread of misinformation. So what we do is try to focus on misinformation. ... If
 26 someone wants to post anti-vaccination content or they want to join a group where people are
 27 discussing that, we don't stop them from doing that. But[...] we don't go out of our way to
 28 make sure our group recommendation systems show people or encourage people to join those

groups. We discourage that.” *Facebook CEO Testimony Before House Financial Services Committee* [Video], C-SPAN (Oct.23, 2019), <https://www.c-span.org/video/?465293-1/facebook-ceo-testimony-house-financial-services-committee> (emphasis added). The above testimony is arguably self-contradictory and disingenuous, and certainly understates the extraordinary aggressiveness of Zuckerberg and Facebook’s censorship campaign against CHD (and, as a consequence, against the potential viewers who are deprived of access to the material and information that CHD wishes to provide concerning the possible dangers posed by vaccines). The point here, however, is that the above testimony clearly indicates Zuckerberg’s direct interest and involvement in Facebook’s effort to censor what he regards as “anti-vaccination” content, and that Zuckerberg has personally authorized, directed and participated in the false advertising campaign intended and designed to implement that effort.

358. As noted *supra*, on February 14, 2019 Congressman Schiff addressed a letter to Zuckerberg pointedly specifying that Facebook take steps, including the implementation of algorithms, to identify, censor and remove supposed “vaccine misinformation.” In his letter’s conclusion, Mr. Schiff wrote that he encouraged Zuckerberg “to consider what additional steps you can take to address this growing problem. As more Americans rely on your services as their primary source of information, it is vital that you take that responsibility with the seriousness it requires, and nowhere more so than in matters of public health and children’s health. Thank you for your attention to this important topic.” *Schiff Sends Letter to Google, Facebook Regarding Anti-Vaccine Misinformation, supra*, Press Releases, CONGRESSMAN ADAM SCHIFF, <https://schiff.house.gov/news/press-releases/schiff-sends-letter-to-google-facebook-regarding-anti-vaccine-misinformation>. By its terms, this letter is addressed personally to Mark Zuckerberg, and its underlying assumption is that Zuckerberg personally directs and is responsible for the conduct of the company — indeed, that he is the company.

359. Whether Zuckerberg ever responded in writing to Rep. Schiff’s letter is, at present, information that is exclusively within Defendants’ knowledge, disclosure of which must await discovery in this matter. Plaintiff is not aware of any evidence indicating that

1 Zuckerberg disclaimed interest in the vaccine issue, or that he disclaimed or had delegated the
 2 personal responsibility for the censorship of so-called vaccine “misinformation” which Mr.
 3 Schiff understood as residing with Zuckerberg. On the contrary, Zuckerberg personally met
 4 with Mr. Schiff after the issuance of Mr. Schiff’s letter to discuss Facebook’s response to
 5 Schiff’s demands. Zuckerberg’s personal interaction with Rep. Schiff alone indicates
 6 Zuckerberg’s direct involvement with Facebook’s response to the issue posed by so-called
 7 “anti-vaccine” information. It is evident that Schiff himself understood that when he was
 8 communicating on this subject with Zuckerberg, he was communicating with the figure at
 9 Facebook who had the ultimate responsibility and the ultimate say in directing Facebook’s
 10 response.

11 360. Reflected in Rep. Schiff’s communications with Zuckerberg, and
 12 communications from other powerful office holders, was an implicit — and sometimes very
 13 explicit — threat that if Facebook failed to censor vaccine “misinformation,” Facebook would
 14 be subject to regulatory action, including the withdrawal of the CDA Section 230 so essential
 15 to its business model. Thus, in June 2019, Rep. Schiff stated publicly, as Chairman of the
 16 House Intelligence Committee, that Congress could or should “make changes” to the law that
 17 currently does not hold social media companies liable for third party content on their
 18 platforms. See, e.g., *Hearings by Congress on “deepfakes” and artificial intelligence* [Video],
 19 GUARDIAN NEWS (June 13, 2019), <https://www.youtube.com/watch?v=1ArPEDS0GTA>.
 20 Schiff emphasized that “if the social media companies can’t exercise the proper standard of
 21 care when it comes to a whole variety of fraudulent or illicit comment, then we have to think
 22 about whether that immunity still makes sense.” K. Waddell, *A new attack on social media’s*
 23 *immunity, supra*, AXIOS, [https://www.axios.com/social-media-immunity-section-230-](https://www.axios.com/social-media-immunity-section-230-f15ac071-32e9-4e33-81e6-4c7ebadaea5e.html)
 24 [f15ac071-32e9-4e33-81e6-4c7ebadaea5e.html](https://www.axios.com/social-media-immunity-section-230-f15ac071-32e9-4e33-81e6-4c7ebadaea5e.html). Similar sentiments were echoed recently in
 25 even more pointed and threatening remarks made by Senator Elizabeth Warren specifically
 26 directed to Facebook: “During the global pandemic, Facebook is looking the other way while
 27 disinformation about the coronavirus goes viral on its platform – a direct threat to the health
 28 and safety of millions of people. No company should be too big to be held accountable for

1 distorting facts and spreading falsehoods, especially during a public health crisis.” Alexandra
 2 Kelley, *Zuckerberg says Facebook won’t remove anti-vaccine posts amid coronavirus*
 3 *pandemic*, THE HILL (Sept. 10, 2020), [https://thehill.com/changing-america/well-](https://thehill.com/changing-america/well-being/prevention-cures/515844-mark-zuckerberg-says-facebook-wont-remove-anti)
 4 [being/prevention-cures/515844-mark-zuckerberg-says-facebook-wont-remove-anti](https://thehill.com/changing-america/well-being/prevention-cures/515844-mark-zuckerberg-says-facebook-wont-remove-anti).

5 361. Zuckerberg is unlikely to have been unaware of the above remarks made publicly
 6 by two prominent and powerful politicians, and the implications that such statements carry for
 7 his company. That awareness is all the more reason that Zuckerberg would have been involved
 8 directly and personally in addressing the issues raised by Rep. Schiff and Senator Warren. The
 9 false advertising and censorship campaign against CHD is part of Zuckerberg’s effort to
 10 appease these and other government officials, and to stave off threatened government
 11 regulation by complying with the demand that Facebook engage in severe censorship of so-
 12 called “anti-vaccine misinformation.”

13 362. While discovery may be necessary to demonstrate the full nature and extent of
 14 Zuckerberg’s personal involvement in, and authorization and direction of, the false advertising
 15 and censorship campaign against CHD, his own statements and his interactions and
 16 communications with Rep. Schiff indicate his direct personal interest in the vaccine issue and
 17 his specific interest in ensuring that that issue is handled to the advantage of Facebook – i.e., in
 18 a manner that does not jeopardize its business model, its relationship with its pharmaceutical
 19 advertisers, or its regulatory immunity. Given Zuckerberg’s position of predominance within
 20 Facebook, he unquestionably has possessed the authority and capacity at all relevant times to
 21 authorize, direct and actively participate in the illegal false advertising and fraud campaign
 22 against CHD described herein.

23 363. Defendants have exclusive possession, custody and control of other evidence of
 24 falsity and/or Zuckerberg’s actual malice, e.g., private records and testimony concerning when,
 25 with whom, how, and why Zuckerberg came to his “understanding” concerning “vaccine
 26 misinformation,” which he confidently holds at “near 100%” certainty; his actual knowledge or
 27 serious doubt of the “warning label’s” falsity; and what “deliberative process,” if any,
 28

1 occurred. *See, e.g., Metabolife*, 264 F.3d at 846 (ordering discovery of information within
2 defendants' exclusive control which may be highly probative of falsity).

3 364. Plaintiff has suffered general and special damages as enumerated below. It is
4 hornbook law that in measuring damages, the Court may consider Facebook's influence and
5 that of Plaintiff, and Facebook's global footprint, "for the greater the circulation, the greater
6 the wrong, and the more reason why greater care should be exercised in the publication[.]"
7 *Graybill v. De Young*, 140 Cal. 323, 330 (1902).

8 365. No retraction demand was made nor required prior to filing this action under
9 California Civil Code section 48a, subdivision (a), because Facebook is not a "daily or weekly
10 news publication" as that term is defined in subsection (d)(5) of that statute.

11 366. Plaintiff is entitled to injunctive relief and to recover their damages, including for
12 reputational harm and loss of business goodwill and revenue, and punitive damages resulting
13 from defendants' intentional acts of false designation and false promotion under the Lanham
14 Act.

15 **THIRD CAUSE OF ACTION**

16 **(RICO — WIRE FRAUD VIOLATIONS)**

17 **Defendants Facebook, Zuckerberg, Science Feedback, Poynter, and Does 1-20**

18 367. Paragraphs 1 through 223 are realleged and incorporated as if fully set forth
19 herein.

20 368. 18 U.S.C. § 1962(c) of the Racketeer Influenced and Corrupt Organizations Act
21 ("RICO") makes it illegal for any person associated with an alleged racketeering enterprise "to
22 conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through
23 a pattern of racketeering activity." To state a civil claim for violations of 18 U.S.C. § 1962(c),
24 as authorized by 18 U.S.C. § 1964(c), Plaintiff must allege: (1) conduct (2) of an enterprise
25 (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) that
26 proximately causes (6) damages to the Plaintiff. Under 18 U.S.C. § 1961(1)(B), an act which is
27 indictable under 18 U.S.C. § 1343 (relating to wire fraud) constitutes a predicate act. A
28 "pattern" requires at least two related predicate acts that amount to or pose a threat of

1 continued criminal activity. A pattern does not require multiple schemes or multiple victims.
 2 “Enterprise,” as defined in 18 U.S.C. § 1961(4), broadly includes “any individual, partnership,
 3 corporation, association, or other legal entity, or any union or group of individuals associated
 4 in fact although not a legal entity.” The definition of a RICO enterprise has wide reach and is
 5 liberally construed to effectuate its remedial purpose. Here, the “persons” were Facebook,
 6 Zuckerberg, Science Feedback, Poynter, and Does 1 to 20, and the “enterprise” was that
 7 distinct group of persons who associated in fact (the Facebook “content management” team) as
 8 a coordinated group to effectuate their fraudulent scheme. *River City Mkts., Inc. v. Fleming*
 9 *Foods W., Inc.*, 960 F.2d 1458, 1461 (9th Cir. 1992) (concluding that “business relationship
 10 akin to a joint venture” was sufficient to establish an associated-in-fact RICO enterprise). As
 11 alleged *supra*, the Facebook content management team is an associated-in-fact enterprise in
 12 that it is an ongoing organization, formal or informal, and its various associates function as a
 13 continuing unit for a common purpose — to damage Plaintiff’s trade and property interests, to
 14 divert users of their page to the CDC, and to unjustly enrich themselves – by fraudulent means.

15 369. Defendants’ motive to profit from vaccine ads and product development and 5G
 16 networks unconstrained by negative publicity on their platform is highly probative of their
 17 intent to commit RICO wire-fraud, even though economic motive itself is not an element of the
 18 claim. *See, e.g., National Organization for Women, Inc. v. Schiedler*, 510 U.S. 249, 252 (1994)
 19 (rejecting the argument that “RICO requires proof either the racketeering enterprise or the
 20 predicate acts of racketeering were motivated by an economic purpose”). Essentially, the task
 21 of the Facebook fraud enterprise was to “clear the field” of CHD’s viewpoint for at least two
 22 market purposes that involve property or money, and lots of it: (1) brand protection for its
 23 vaccine maker ad buyers; and (2) its own future secured interest in vaccine patents and
 24 technical products and processes that depend on 5G-networks for their commercial viability.
 25 *See, e.g., United States v. Reyes*, 660 F.3d 454, 463 (9th Cir. 2011) (admitting evidence that
 26 defendant made money on a fraudulent scheme). In addition, as alleged *infra*, CHD’s followers
 27 and others relied upon defendant’s misrepresentation in ways that caused CHD to lose
 28 donations and membership fees, and injured CHD in its organizational trade.

1 370. For his part, in addition to all else, Zuckerberg was active in managing with his
2 wife the day-to-day affairs of CZI and CZ-Biohub, and he exercised specific control over their
3 vaccine development efforts. By his public statements, Zuckerberg was directly responsible for
4 Facebook’s false and misleading statements about Plaintiff’s posted content. He participated in
5 the ongoing associated-in-fact enterprise to develop his for-profit vaccine and 5G products
6 unconstrained by any public scrutiny of that effort by Plaintiff.

7 371. Thus, all named defendants both inside Facebook’s formal structure (Zuckerberg,
8 Does 1-10) and out (Science Feedback, Poynter, Does 1-20) aided in one or another aspect of
9 their common fraud scheme: to label Plaintiff’s page “unreliable” and “out-of-date” and
10 redirect users to the CDC; to label Plaintiff’s speech-content “False” when it is critical of
11 vaccine or 5G network safety, accomplishing this censorship through the sham machinations of
12 “content moderators” and “independent fact-checkers”; and to conceal their true purposes of
13 profiting from vaccine manufacturer advertising and from their own vaccine and 5G network
14 development, all of which would be adversely affected by Plaintiff’s ongoing public health-
15 related speech.

16 372. The wire fraud statute, 18 U.S.C. § 1343, prohibits schemes to defraud or to
17 obtain money or property, or cause financial loss to another, by means of “false or fraudulent
18 pretenses, representations, or promises” if interstate wire or electronic communications are
19 used to execute the scheme. The concept of a misrepresentation is broad, reaching not only
20 false statements of fact, but also all of Facebook’s misleading half-truths, deceptive omissions,
21 and knowingly false suggestions and promises as to the future. It is no defense that the
22 intended victim was too gullible or, on the other hand, was too sophisticated to be taken in by
23 the deception.

24 373. Defendants also committed wire-fraud acts constituting “interference with
25 interstate commerce by threat” under 18 U.S.C. § 1951 in that the residual 0.05% of users who
26 — notwithstanding Facebook’s false “warning label” and “fact-checks” — actually click-
27 through to view Plaintiff’s actual content, suffer particular adverse consequences in terms of
28 “sandboxing,” and other detriments to their accessible tools and information on Facebook. As

1 alleged *supra*, with respect to its active collaboration with government officers and agencies,
2 Facebook took such actions under “color of official right.” 18 U.S.C. § 1951(2).

3 374. Plaintiff further alleges that defendants caused a domestic injury to their business
4 or property. Where, as here, defendants specifically targeted their conduct at Plaintiff with the
5 aim of thwarting Plaintiff’s rights in the United States, their activity results in a domestic
6 injury.

7 375. Under Fed. R. Civ. P. 9(b), predicate acts of wire fraud must be alleged with
8 specificity as to the contents of the communications, who was involved, where and when they
9 took place, and why they were fraudulent. As alleged *supra*, defendants engaged in a scheme
10 to defraud and made use of electronic and internet transmissions, and/or telephone calls, emails
11 and texts in furtherance of the scheme, with the specific intent to deceive or defraud.

12 376. Plaintiff reasonably relied on defendant Facebook to adhere to its terms of
13 service and community standards; not to engage in content creation on their Facebook pages;
14 and not to mislead them, their advertising agency, or the world of third-party users as to the
15 truth or falsity of content on their pages, or the visibility or reach of those pages. Plaintiff was
16 misled by defendants, and even now is misled by Facebook’s product design as to which of
17 CHD’s posts have been altered, demoted, or blocked from all third-party users. Moreover,
18 Plaintiff was substantially injured by Facebook’s third-party users’ reliance on defendants’
19 falsehoods. *See Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. at 658 (Plaintiff alleging a
20 RICO violation may establish causation through first person or third-party reliance).

21 377. As a direct and proximate result of Defendants’ predicate acts in violation of 18
22 U.S.C. §§ 1961(1)(B), 1962(c), Plaintiff has been and is continuing to be injured by harm to its
23 specific property interests and financial losses, including by Defendants’ denial of any third-
24 party donations to Plaintiff’s organization; their refusal to accept Plaintiff’s advertising
25 purchases aimed at promoting such third-party donations; and their concerted efforts to reduce
26 the visibility and reach of Plaintiff’s page, to reduce traffic to that page, and to reduce
27 membership and speaker fees, and book and other sales that accrue to Plaintiff from such
28 traffic (*see Xcentric Ventures, LLC v. Borodkin*, 798 F.3d 1201, 1203 (9th Cir. 2015) (loss of

specific business opportunities are recoverable under RICO)); and, finally, by publishing false and disparaging warning labels, and censoring of content, which have caused damage to Plaintiff's professional reputation and other valuable tangible and intangible property rights resulting in financial loss.

378. Defendants' actions have already injured Plaintiff, and will have the effect of further injuring them by damaging its trade reputation and goodwill, and those of their authors, diverting traffic from its site, and further curtailing its revenue and donations. *See, e.g., Harmoni Int'l Spice, Inc. v. Hume*, 914 F.3d 648, 653 (9th Cir. 2019) (Plaintiff's lost sales as a direct result of the defendants' predicate acts cognizable under RICO); *Kaiser Foundation Health Plan, Inc. v. Pfizer, Inc. (In re Neurontin Mktg. & Sales Practices Litig.)*, 712 F.3d 21, 29-30 (1st Cir. 2013) (statistical link between fraudulent marketing and off-label prescribing, without proof of any particular doctor-patient prescription, cognizable under RICO); *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1166 (9th Cir. 2002) (fraud on the market for labor, in that wages were depressed when defendants hired undocumented workers, cognizable under RICO); *United States v. Stockheimer*, 157 F.3d 1082, 1087-88 (7th Cir. 1998) ("An intent to defraud does not turn on personal gain ... all that matters is that [the defendant] intended to inflict a loss."); *Resolute Forest Prods. v. Greenpeace Int'l.*, 2019 U.S. Dist. LEXIS 10263, *48 (N.D. Cal. 2019) (Plaintiff's lost revenue due to customers' reliance upon defendants' statements states a cognizable injury under RICO); *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Practices & Prods. Liab. Litig.* 295 F. Supp. 3d 927, 961 (N.D. Cal. 2018) (statistical link between fraudulent marketing and Plaintiffs' overpayment may establish causation and injury to property). Facebook's diversion of users and removal of CHD's donate button caused a concrete RICO injury to CHD which had received \$28,000 in May 2019 alone through that function, before it was deactivated through one of Facebook's predicate wire-fraud acts. *See Resolute Forest Prods. id.* Facebook may or may not take CHD's money from those third-party users it defrauds, but that is hardly a defense. Facebook profits illicitly from its users whenever those users are misled by false fact-checks to click through and see new prompts and paid ads. Facebook also profits illicitly by solidifying its relationship with its

1 pharmaceutical advertisers with duplicitous methods. There is a far greater societal good in
 2 holding Facebook to its duty to be honest and truthful with its users than in letting Facebook
 3 off the hook if its deceptions do not directly take money from those users. After all, Facebook
 4 and Zuckerberg intended to destroy CHD's donations, membership fees, and business goodwill
 5 through coordinated acts of wire-fraud, even if they did not "pocket" CHD's losses themselves.
 6 CHD has been injured in its "business or property by reason of" defendants' RICO violations.
 7 18 U.S.C. § 1964(c).

8 379. Facebook disabled CHD's donate button in order to inflict a loss to CHD's
 9 revenue. Facebook's proffered rationale that it was because fact-checkers disputed CHD's
 10 posts was pretextual. (For example, defendants have not restored the fundraising tools even
 11 after removing fact-checked content entirely.) Facebook's use of interstate wires to remove
 12 CHD's fundraising tools was closely entwined with its fraudulent activity, and the removal
 13 contributed to the success of the scheme. "This connection is not to be measured by a technical
 14 standard; rather, what is required is that the mailings somehow contribute to the success of the
 15 scheme." *United States v. Halbert*, 640 F.2d 1000, 1009 (9th Cir. 1981). The mail and wire-
 16 fraud statutes are identical in this regard. Under 18 U.S.C. § 1964(c), Plaintiff seeks to recover
 17 threefold the damages they have sustained, and the cost of this suit, including an award of their
 18 reasonable attorneys' fees.

19 **FOURTH CAUSE OF ACTION**

20 **(DECLARATORY RELIEF)**

21 **Defendants Facebook, Zuckerberg, Science Feedback, Poynter, and Does 1-20**

22 380. Paragraphs 1 through 329 are realleged and incorporated as if fully set forth
 23 herein.

24 381. The Declaratory Judgment Act, codified in 28 U.S.C. § 2201(a), provides in
 25 pertinent part that, "[i]n a case of actual controversy within its jurisdiction [] any court of the
 26 United States, upon the filing of an appropriate pleading, may declare the rights and other legal
 27 relations of any interested party seeking such declaration, whether or not further relief is or
 28

1 could be sought. Any such declaration shall have the force and effect of a final judgment or
2 decree and shall be reviewable as such.”

3 382. An actual controversy has arisen and now exists between Plaintiff and
4 defendants, concerning their respective rights and duties in that these defendants have
5 published a false and misleading warning label on Plaintiff’s Facebook page; have fraudulently
6 misrepresented to third-party users of the page that Plaintiff has posted and is posting “false
7 [factual] information” in violation of their terms of service; and refuse to permit Plaintiff to
8 solicit donations or purchase advertisements on the social media platform. Defendants have
9 used deceptive means to limit the reach and visibility of CHD’s page. Finally, and within the
10 past two months, Zuckerberg has threatened to ban, limit, warn, deboost, block or censor
11 content regarding 5G network safety.

12 383. Under Ninth Circuit law, “intangible injuries, such as damage to ongoing
13 recruitment efforts and goodwill, qualify as irreparable harm,” and weigh in favor of injunctive
14 relief. *Continental Airlines, Inc. v. Intra Brokers, Inc.*, 24 F.3d 1099, 1105 (9th Cir. 1994);
15 *Rent-A-Ctr., Inc. v. Canyon TV and Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991).
16 Moreover, the “loss of First Amendment freedoms, for even minimal periods of time,
17 unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).
18 Accordingly, Plaintiff has suffered – and continues to suffer – irreparable harm.

19 384. Plaintiff seeks a judicial determination of its rights and remedies and a
20 declaration as to the parties’ respective rights and obligations with respect to CHD’s Facebook
21 page. A judicial declaration is necessary and appropriate at this time so that Plaintiff may
22 ascertain its rights to publish content on those pages without any interference, censorship,
23 warning labels, “shadowbanning,” “deboosting,” “sandboxing,” or other deceptive means and
24 methods employed by defendants, and with respect to other affirmative relief such as a public
25 apology and entry on a First Amendment “shield list” by defendants.

26 385. As a result of Facebook’s unlawful conduct, Plaintiff has suffered substantial
27 damages, including, but not limited to:
28

- a. Plaintiff was deprived of freedom of speech;
- b. Plaintiff was foreclosed from future opportunities to reach subscribers on Facebook;
- c. Plaintiff lost status and prestige amongst Facebook followers, the general public and the journalistic community;
- d. Plaintiff suffered reputational harm;
- e. Plaintiff lost third-party donations to Plaintiff's organization, speaker fees, and book and other sales that would have accrued to Plaintiff but for defendants' misconduct; and,
- e. These injuries are continuing in nature requiring injunctive relief.

WHEREFORE, Plaintiff CHD demands judgment against Facebook Inc. for damages and injunctive relief as set forth below.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

* * * * *

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Children's Health Defense respectfully requests:

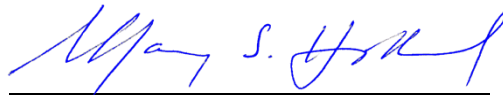
- A. Compensatory damages in an amount to be determined by the Jury, but not less than \$5,000,000.
- B. An award of treble damages to Plaintiff in an amount to be determined at trial.
- C. An injunction and declaratory judgment ordering Facebook to remove its warning labels and misclassification of all content on Plaintiff's Facebook page, and to desist from any further warnings or classifications.
- D. An award of attorneys' fees and costs to Plaintiff in an amount to be determined at trial.
- E. An award of punitive damages to Plaintiff in an amount to be determined at trial.
- F. An order requiring defendants to make a public retraction of their false statements.
- G. An award of such other and further relief as the Court may deem just and proper.

Date: November 13, 2020

Respectfully submitted,



ROBERT F. KENNEDY, JR.
Founder and Chairman, Children's Health Defense



MARY S. HOLLAND
General Counsel, Children's Health Defense



ROGER I. TEICH

Counsel for Plaintiff
Children's Health Defense

VERIFICATION

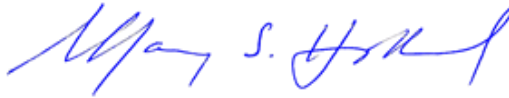
I, MARY HOLLAND, declare under penalty of perjury as follows:

1. I am the general counsel for Children's Health Defense, a non-profit organization and Plaintiff in this action.

2. I have reviewed the foregoing Complaint and declare that the facts set out therein are true to the best of my knowledge and belief, except those matters stated as upon information and belief, which are true to the best of my belief.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 13th day of November 2020, in Rockland County, New York.



MARY HOLLAND

General Counsel, Children's Health Defense

Attorney for Plaintiff

Children's Health Defense